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Joint Budget Legislative Public Hearing on Human Services

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**Hearing Room B, Legislative Office Building
Albany, NY**

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Presented by:

Susan Antos

Good evening. My name is Susan Antos and I am a Senior Attorney in the Albany office of Empire Justice Center. Thank you for the opportunity to testify today to provide you with our input on the Executive Budget as it pertains to human services.

Empire Justice Center is a statewide nonprofit law firm with offices in Albany, Rochester, White Plains and Central Islip. We act as a support center, providing research and training, and as an informational clearinghouse, providing litigation backup to local civil legal services programs. We also undertake impact litigation and engage in legislative and administrative advocacy on behalf of legal services programs and the clients they serve. We currently have staff attorneys specializing in Health and Medicaid, Supplemental Security Income (SSI) and Social Security Disability (SSD) benefits, Public Benefits (cash assistance, child care, food stamps and child support issues), Education and Special Education, Public and Subsidized Housing, legal issues affecting low income immigrants and people living with HIV and AIDS, Consumer Law, Domestic Violence and Civil Rights.

Our testimony today will be brief. We will focus on three distinct issues –

- The critical need for increased investment in child care assistance to support struggling families by bringing funding back to the 2010-11 level;
- A call for targeted focus on disabled individuals interacting with our state's public assistance programs:
 1. By reinvigorating the Disability Advocacy Program to leverage federal dollars to help stabilize the financial resources of low income disabled individuals and to maximize federal savings at the same time.
 2. By ensuring that disabled individuals applying for public assistance are identified and provided with necessary accommodations.
 3. By ensuring that people on welfare are not sanctioned if they are unable to comply with work rules, due to their disability or to problems with child care or transportation.
- Support for the Executive Budget's funding of the Managed Care Consumer Assistance Program (MMCAP) at last year's level.

INVEST A TOTAL OF \$92 MILION IN CHILD CARE ASSISTANCE

- ***Invest because child care is an economic development strategy.***

Low income working families in New York State are facing a crisis of unprecedented proportions, as funding for the state's Child Care Block grant remains stagnant and at a level \$92 million below funding for 2010-2011. As an increasing number of counties across the state cut eligibility for child care assistance due to lack of funding, we believe

that it is essential that funding be restored to the 2010-11 level, not only because New York's low income families rely heavily on child care assistance to make ends meet, but also as a critical economic development initiative.

The Governor's budget, which has made a priority of economic development in other areas, overlooks the importance of this critical investment. In his justification for the minimum wage increase (which we endorse), the Commissioner of the New York State Department of Economic Development notes that the annual cost of child care for a working family exceeds \$10,000 per year.¹ The Governor's proposal, which will increase a minimum wage earner's income to just over \$18,000 (at 40 hours per week and 52 weeks per year), will still mean that a single parent with two children will remain below the poverty level and that the cost of child care remains well beyond reach.

An investment in one child care subsidy is an economic investment in two jobs. Not only does every child care subsidy keep a low income worker employed, it also supports a significant small business sector in New York State – child care providers. Child care providers constitute 22,000 small businesses, including not-for-profit and for-profit centers, Head Start and Pre-kindergarten programs and 11,000 family child care providers.² Early care and education teachers, aides and staff represent one of the fastest growing employment sectors in the economy. The child care sector employs approximately 119,000 workers and is comparable in size to the local/interurban passenger transit system and the hotel and lodging sector.³ An America's Edge commissioned study utilizing the IMPLAN model, an economic modeling system that is widely used to conduct economic impact and related analyses, demonstrated that the child care industry produces a boost to local businesses as high or higher than investments in other major sectors: construction (\$1.86), retail trade (\$1.83), manufacturing (\$1.72) transportation (\$1.72) and utilities (\$1.53).⁴ The America's Edge study reports that for every new dollar invested in early care and education, the statewide economic benefit is \$1.86.

We commend the Governor for adding an additional \$70 million in TANF funds into the child care block grant. Unfortunately, the corresponding decrease in the state's general fund investment of the same amount leaves the size of New York's child care block grant

¹ Presentation of Kenneth Adams, Commissioner NYS Department of Economic Development, 1/24/13, Colonie, New York.

² *Investing in New York: An Economic Analysis of the Early Care and Education Sector*, Cornell University Department of City and Regional Planning (2004)

³ Id.

⁴ America's Edge. 2010. Strengthening New York Businesses through Investments in Early Care and Education: How investments in Early Learning Increase Sales from Local Businesses, Create Jobs and Grow the Economy. http://www.ocfs.state.ny.us/main/reports/Create_Jobs_Through_Early_Education.pdf

at \$907,245,924⁵ (unchanged from last year), and below the level of funding for the three fiscal years before that.

Rather than cutting the state's investment to offset the TANF increase, New York should maintain the \$70 million general fund investment from last year and add \$22 million dollars for a total of \$999,328,543 – the 2010-11 funding level.

- ***Invest because child care assistance helps keep families off of welfare***

Investing in child care is a critical piece of the welfare-to-work strategy that dramatically reduced the number of people on public assistance in New York State.

As a result of 1996 Federal Welfare Reform, with its emphasis on “work first,” public assistance rolls have plummeted as families left welfare for low wage jobs. In 1995, there were 1.5 million recipients of cash public assistance in New York State; 1.2 million received Aid to Families with Dependent Children (AFDC, the cash public assistance program before welfare reform). 803,000 of these recipients were children. By 2011, the number of persons on Temporary Assistance had plummeted to 565,224 (307,544 of those recipients were children) as low income parents left the welfare rolls to work at low wage jobs instead of staying home with their children.

However, without assistance in paying for child care, low wage workers cannot make ends meet. The report on the Self-Sufficiency Standard for New York concludes that in order meet basic needs, including child care, a family of three with a pre-schooler and a school age child needs the following hourly wage:⁶

- NYC (Northern Manhattan): \$27.38 per hour;
- Westchester – Yonkers: \$32.38 per hour;
- Erie: \$22.33 per hour;
- Suffolk: \$37.37 per hour.

These hourly wages are significantly above the wages earned by many families, and yet given limited funding, at least one-third of all social services districts are not able to help all eligible low income working families. The percentages below represent current income eligibility for child care assistance:

- Seneca, Suffolk and Tompkins: 100% of poverty (\$19,010 for a family of three);
- Niagara: 120%;
- Albany, Dutchess and Essex: 125%;

⁵ This number assumes the same level of Flexible Fund for Family Services transfers to child care by social services districts as last year, as indicated in the attached chart.

⁶ D. Pearce, The Self Sufficiency Standard for New York State 2010, <http://www.selfsufficiencystandard.org/docs/New%20York%20State%202010.pdf>

- Fulton, Oneida, Ontario, Orange and Saratoga and Schenectady: 150%;
- Cayuga and Livingston: 160%;
- Monroe: 165%;
- Cattaraugus: 175%;
- Rensselaer: 180%;
- Washington: 185%;
- Chemung: only opening new cases for mandated categories (TANF related and Transitional Child Care) and has 202 families (510 children) on its waiting list;
- Although the income eligibility limits in New York City have not formally changed, and eligibility remains up to 275% of the federal poverty level, the effective rate reflects very differently. As of April 2012:
 - 64.1% of households receiving child care (non-TANF) were below 100% of the federal poverty line;
 - 81.8% were under 135% of the federal poverty line;
 - 92.2% were under 175% of the federal poverty line.

Adequate funding for childcare is critical to the success of New York's economic development initiatives and of welfare reform. It makes no sense to guarantee a child care subsidy to welfare recipients who find a job for one year, and then remove that benefit when their wages remain at a level that is not high enough to promote self-sufficiency. Adequate funding for child care is a win-win for parents, child care providers and New York's economic development initiatives.

INVEST A TOTAL OF \$7 MILLION IN THE DISABILITY ADVOCACY PROGRAM

Through the NYS Disability Advocacy Program (DAP), advocates in every New York county provide low income disabled New Yorkers with legal representation when their federal Supplemental Security Income (SSI) or Social Security Disability (SSD) applications have been denied or benefits terminated. DAP clients are among New York's *most severely disabled adults and children*—many are mentally ill or homebound and cannot stabilize their lives without DAP's support.

This year marks the 30th year DAP has been operating in New York. It is now a **nationally recognized social services model that returns much MORE to NYS than it costs – estimated at as much as \$6 for every \$1 invested.** When DAP advocates are successful, the federal government pays the state and counties back for any state and local funded welfare benefits provided to clients – leveraging a total of \$205 million in federal interim assistance over the life of the program. In addition, clients receive direct federal payments to spend on essential needs, stimulating core economic activity at the local level in the form of rent payments, food and clothing purchases, and other daily expenditures. This local stimulus totaled more than \$700 million over the last 30 years. And finally, the state and localities have saved over \$270 million by no longer having to

provide welfare benefits to disabled New Yorkers who are moved onto more appropriate federal disability assistance. All in all, over 207,000 disabled New Yorkers have been served and over \$1 billion has been leveraged for a total investment of \$130 million over 30 years. **Over the life of the program, the interim assistance alone paid for DAP services, leaving \$75 million additional dollars, plus the additional cost savings and direct payments to clients that stimulate the local economy.**

This year DAP is funded in the Executive Budget at \$4.76 million, the same level as in last year's Executive Budget. Recognizing the significant cuts in funding for the program – approximately 30% - and the erosion the funding cuts have had on DAP advocates' ability to meet the persistent unmet demand for services, the Legislature last year provided a \$250,000 general fund increase in funding. We wholeheartedly appreciate this show of confidence in the DAP program and are in the process of putting it to good use.

Unfortunately, with funding still well below what it had been, DAP advocates continue to have to turn away thousands of clients a year, losing the ability not only to help people in need, but also to leverage federal funding and state savings that go along with the vast majority of people served.

To reinvigorate this remarkable program that invests in the financial stability of disabled individuals, draws down federal dollars into state and local coffers and communities, and saves the state at least \$7 million in avoided welfare payments every year, **we urge the Legislature to work with the Governor to increase DAP funding to \$7M, \$2.24 million over what was included in the Executive Budget.** Either the interim assistance generated or the costs avoided in the next state fiscal year will fully cover the cost of the program, while still leveraging significant federal dollars. DAP is a sound investment that has paid off – for 30 years and counting.

SUPPORT THE EXECUTIVE BUDGET'S CONTINUED FUNDING FOR MEDICARE CONSUMER ASSISTANCE AT \$1.767 MILLION (Office for the Aging)

We are grateful that the Executive Budget maintains level funding for the Managed Care Consumer Assistance Program (MCCAP), a statewide initiative run through the New York State Office for the Aging (NYSOFA). MCCAP is essential for New York in this fiscal climate because it assists seniors and people with disabilities in accessing services and reducing health care costs through Medicare.

MCCAP consists of seven partner agencies that help elderly and disabled Medicare beneficiaries navigate the complicated world of Medicare Part D and access the health care they need. MCCAP helps to save the state EPIC and Medicaid dollars by shifting costs to federal Medicare Part D coverage; it is also one piece of the critical safety net of programs serving our vulnerable senior population.

MCCAP agencies partner with NYSOFA, NYSDOH and CMS to provide training, technical support and assistance to local Health Insurance Information Counseling and Assistance Program (HIICAP) offices across New York State and other nonprofit organizations working directly with Medicare consumers across New York State. Additionally, MCCAP agencies work directly with consumers to provide education, navigational assistance, legal advice, informal advocacy and direct representation in administrative appeals. We serve clients in their communities and provide services in their native languages; consumers also increasingly reach us via internet and our telephone helplines, as well as through our educational materials and referrals from HIICAPs.

Medicare Part D remains a highly complex program with complicated rules governing enrollment periods, access to federal subsidies, and procedures for appealing denials of necessary medications. We continue to field high volumes of calls from HIICAP agencies and other advocates for elderly and disabled Medicare recipients who need help maximizing their federal coverage.

One of MCCAP's most critical functions is to communicate regularly with NYSDOH, NYSOFA and CMS about issues occurring on the local level and to collaborate on opportunities for administrative improvements. After Hurricane Sandy, led by the Medicare Rights Center, we successfully advocated with CMS to allow Medicare beneficiaries, who missed the Part D annual open enrollment deadline due to the impact of the hurricane, a one-time opportunity to enroll into a new Part D or Medicare Advantage plan.

FOCUS ON ADDRESSING DISABILITIES FOR INDIVIDUALS ON WELFARE

A significant number of people who receive or apply for public assistance benefits have physical and/or mental disabilities that limit their ability to perform the full range of daily functions. Unfortunately, the welfare system is ill-equipped to recognize these disabilities, and therefore too often fails to make needed accommodations for disabled individuals. As a result, the person with disabilities is often unable to successfully complete the application process, is unable to take necessary steps to retain benefits, or will be sanctioned for failing to comply with work-related requirements. Therefore, Empire Justice Center supports legislation that

1. would improve the process by which public assistance clients are screened for disabilities, and
2. would ensure that clients are not improperly sanctioned for alleged non-compliance when the failure to comply related to a disability that had not been adequately diagnosed or accommodated. The proposed changes, while focusing on people with disabilities, would make the welfare system more fair and functional for all in need of assistance.

- ***Screening and accommodations for people with disabilities.***

Public assistance recipients are much more likely to have serious disabilities than the population in general, and are even more likely to have disabilities than other low-income people.⁷ Despite these facts, few Departments of Social Services around New York State currently have in place an effective means of evaluating clients for disabilities and the State Office of Temporary and Disability Assistance (OTDA) offers little in the way of guidance or oversight to the departments.

When disabilities go undetected, needed accommodations are not made. As a result, clients may be simply unable to navigate the complex application process, or will be very likely unable to comply with the manifold requirements of the public assistance system, resulting in a denial or termination of benefits, or the imposition of unwarranted sanctions for non-compliance.⁸

We support legislation which would require districts to offer clients the opportunity to be evaluated for disabilities, using a high quality tool to be developed by OTDA. If the initial screening suggests a possible disability, the client must be offered a more in-depth evaluation by a qualified professional. If the evaluation process indicates the presence of a disability, the client must be offered appropriate accommodations to ensure access to the programs and benefits for which s/he is eligible. For the proposed legislation, please contact Don Friedman via email at DFriedman@empirejustice.org.

- ***Protection against improper sanctions.***

When a Social Services district determines that a public assistance recipient has failed to comply with a work requirement, a sanction (a reduction or termination of benefits) is imposed against the household. Three facts provide the impetus for this effort to protect against sanctions:

1. People who are sanctioned are disproportionately people with disabilities who may well be unable to comply with rigorous work rules.⁹

⁷ See, for example, Loprest and Maag, "Disabilities Among TANF Recipients: Evidence from the NHIS Final Report," The Urban Institute, May 2009. One study cited in this report found that close to 30% of TANF recipients have serious disabilities.

⁸ People with disabilities are disproportionately likely to be sanctioned. See, for example, Nadel, Wamhoff, and Wiseman, "Disability, Welfare Reform, and Supplemental Security Income," Social Security Bulletin, Vol. 65 No. 3, 2003/2004.

⁹ See Nadel, Wamhoff, and Wiseman, footnote 2; Dan Bloom and Don Winstead, "Sanctions and Welfare Reform," Brookings Institution, Policy Brief No. 12, Jan. 2002, <http://www.mdrc.org/publications/191/policybrief.html>; Shawn Fremstad, "Recent Welfare Reform Research Findings: Implications for TANF Reauthorization and State TANF Policies," Center on Budget and Policy Priorities, Jan. 2004.

2. Sanctions cause serious hardship. Research shows that sanctions result in increased incidence of hunger, health problems, eviction, and the need for emergency housing, food and clothing.¹⁰
3. Decisions to impose sanctions are often erroneous, due to agency administrative errors, inadequate notice to the client or client disabilities.¹¹

We support A.2669 which would protect against unwarranted sanctions by requiring that:

- Before imposing a sanction, districts must determine whether the alleged failure to comply was related to a disability, child care problem or transportation difficulties; and
- Mandatory durational sanctions would be replaced by the client's right to avoid or lift a sanction by demonstrating a willingness to comply with the work requirements.

Sanctions are far too common in the welfare system. In New York City, where a large majority of the state's welfare recipients reside, at any given point in time nearly a quarter (25%) of the employable public assistance population is either being sanctioned or in the midst of the sanction process.¹² We believe that the recommended changes would ensure that public assistance recipients have the opportunity to participate in appropriate work activities and are not punished if their failure to participate is the result of disabilities or other circumstances beyond their control.

The two proposals described here would result in a more humane *and* also more functional welfare system, where the primary objective is not to impose harsh punishments, but rather to ensure that people with disabilities are properly accommodated and engaged in a constructive manner.

Thank you once again for the opportunity to testify today. If you have any questions, I am happy to answer them.

¹⁰ Tim Casey, The Sanction Epidemic in the Temporary Assistance for Needy Families Program, Legal Momentum, August 2010, <http://www.legalmomentum.org/assets/pdfs/sanction-epidemic-in-tanf.pdf>.

¹¹ See, for example, Public Advocate for the City of New York, "Hearing Problem: An Analysis of Human Resources Administrations Fair Hearing Outcomes in New York City," October 2009, Brennan Center Strategic Fund, Inc., "Improving New York City's Public Benefits System: A Key Role for Help Desks," 2008, http://www.brennancenter.org/content/resource/improving_new_york_citys_public_benefits_system_a_key_role_for_help_desks/

¹² New York City data is used here because the same statistic, the percentage of engagable recipients being sanction or threatened with a sanction, is not readily ascertainable for the state as a whole. The source of the NYC data is the Caseload Engagement Status Report for the week of December 25, 2011, from the website of the Human Resources Administration, www.nyc.gov/html/hra/downloads/pdf/citywide.pdf.

➤ **CHILD CARE IN THE NYS BUDGET SFY 2009-2013 (APRIL 1-MARCH 31) (IN MILLIONS)**

Category	SFY 2009-10	SFY 2010-11	SFY 2011-12	SFY 11-12 Including Special Session	SFY 2012-13
CCDF	\$302,710,215	\$301,395,817	\$301,398,909	\$301,398,909	\$299,535,139¹
TANF line outs					
Subsidies	\$392,967,000	\$392,967,000	\$392,967,000	\$392,967,000	\$324,276,000
Migrant	\$1,754,000	\$0	0	0	0
SUNY	\$1,960,000	\$947,000	\$193,000	\$193,000	193,000
CUNY	\$1,440,000	\$696,000	\$141,000	\$141,000	141,000
Facilitated Enrollment	\$10,900,000	\$5,265,000	\$3,395,000	\$3,395,000	\$1,265,000 ²
TANF FFFS****	\$11,018,515	\$39,020,120	\$6,166,000 ³	\$6,166,000	\$6,006,780 ⁴
Total General Fund	\$138,335,700	\$142,351,700	\$144,351,700	\$151,351,700 (\$7 m. added for facilitated enrollment)	\$213,542,700⁵
Appropriations					
Local MOE- CCDF	\$68,293,085	\$68,293,085	\$68,293,085	\$68,293,085	68,293,085
Federal ARRA	\$48,392,821	\$48,392,821	0	0	0
Total Funding	\$977,771,336	\$999,328,543	\$916,905,694	\$923,905,694	\$907,245,924

➤ **** County determined transfer from FFS to CCDF

¹ See attached chart for specific allocations within the Child Care Development Fund appropriations. Although there is \$360 million in spending authority, we are only expecting \$300 million in CCDF funds from the feds.

² For Capital Region/Oneida

³ The counties that elected to transfer Flexible Fund for Family Services into their share of the NYSCCBG are Cattaraugus (\$100,000); Cayuga (\$500,000); Chemung (\$750,000); Franklin (\$100,000); Lewis (\$25,000); Nassau (\$1 million);(Niagara \$20,000); Onondaga (\$2.4 million); Rockland (\$500,000); Seneca (\$100,000); St. Lawrence (\$400,000); Tioga (\$200,000); Tompkins (\$40,000) and Wyoming (\$31,000). See: <http://otda.ny.gov/resources/ffis>

⁴ The counties that elected to transfer Flexible Fund for Family Services into their share of the NYSCCBG for SFY 2012-13 are Cattaraugus (\$315,000); Cayuga (\$520,000); Chemung (\$300,000); Franklin (\$100,000); Nassau (\$700,000); Onondaga (\$2.4 million); Oswego (\$80,000); Otsego (\$140,000); Rockland (\$500,000); Seneca (\$100,000); St. Lawrence (\$400,000); Tioga (\$164,995); Tompkins (\$261,785); and Wyoming (\$25,000). See: <http://otda.ny.gov/resources/ffis>

⁵ See attached chart for specific allocations within the General Fund appropriations.

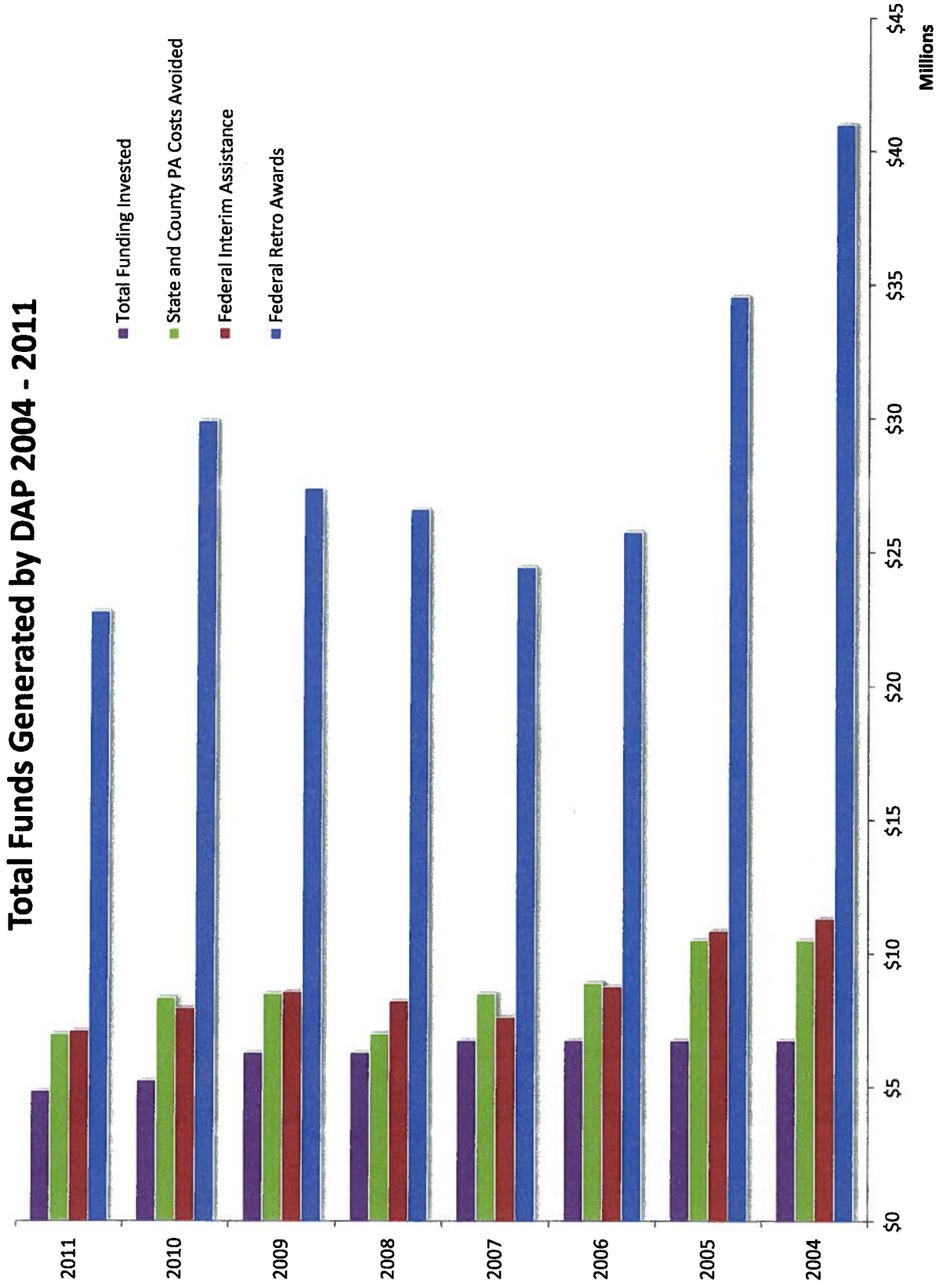
Breakout of CCDF Appropriations in 2012-13 New York State Budget

Category	SFY 2012-13
Total CCDF Appropriation in Aid to Localities Budget broken out as set forth below	\$324,276,000
<i>subsidies</i>	216,755,000
CCR & R	\$22,034,000
<i>Legally exempt enrollment agencies - NYC</i>	\$6,125,000
<i>Infant Toddler Centers</i>	\$1,100,000
<i>Child Care Provider Training</i>	\$6,434,000
<i>Automated licensing systems</i>	\$2,000,000
<i>Scholarships Education Ongoing Professional Development</i>	\$10,240,000
<i>Health and Safety Start up</i>	\$586,000
<i>Child Care in State Courts</i>	\$300,000
SUNY CC	\$2,020,000
CUNY CC	\$2,020,000
<i>Migrant Child Care</i>	\$750,000
<i>Market Rate Survey</i>	\$50,000
<i>Additional spending authority if funds received</i>	\$38,332,000
Total CCDF Appropriation in State Operations Budget	\$51,254,000
TOTAL CCDF Spending Authority	\$360,000,000

Breakout of General Fund Appropriations: Enacted 2012-2013 NYS Budget

Category	SFY 2009-10	SFY 2010-11	SFY 2011-12	SFY 11-12 Including Special Session	SFY 2012-13
General Fund Appropriations	\$138,335,700	\$142,351,700	\$144,352,700	\$151,351,700	\$213,542,700
ARRA MOE	973,000	0	0	0	0
Local district subsidies	137,362,700	137,362,700	137,362,700	137,362,700	208,053,700
CSEA Quality Grant Program	0	2,235,000	3,735,000	3,735,000	3,735,000
UFT Quality Grant Program	0	0	1,500,000	1,500,000	0
CSEA Professional Development	0	500,000	0	0	0
UFT Professional Development	0	500,000	0	0	0
Migrant Child Care Facilitated Enrollment	0	1,754,000	1,754,000	1,754,000	1,754,000
	0	0	0	7,000,000	0

State and Local Funds Invested in the Disability Advocacy Program vs. Total Funds Generated by DAP 2004 - 2011



Source: NYS OTDA Disability Advocacy Program Reports to the NYS Legislature 2004-2009, and pending Report for 2010-2011. For more information contact the DAPWorks for NYS Campaign: kbrown@empirejustice.org