

TESTIMONY

of

The New York State Association of Small City School Districts

for

Public Hearing: To examine the distribution of the Foundation Aid formula as it relates to pupil and district needs

Senate Hearing Room, 250 Broadway, 19th Floor
New York, New York

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Submitted by:

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TESTIMONY

On behalf of the New York State Association of Small City School Districts¹ (NYSASCSD), we welcome this opportunity to submit testimony on the distribution of education aid through the Foundation Aid formula. We also provide this testimony in support of the other higher need/lower wealth districts and children in New York.² Together with the small cities, these demographically similar districts serve more than one half million students in the neediest communities in the state.

INTRODUCTION

In 2007 the Legislature enacted the Foundation Aid formula into law. This formula represented a sea-change in education policy by basing funding on the actual costs of success in NYS school districts. We believe this formula is the hope for the future of public education in higher need districts throughout the state. The Legislature should be proud of the bold step it took in 2007. It should not back-off from the commitment made twelve years ago. Moreover, the present effort³ of the Senate Education and Budget Committees to explore ways to improve and strengthen the formula is to be highly commended.

FULL FUNDING SHORTFALL

The following are our central observations, understanding of which is essential to making sound judgements on education policy and the Foundation Aid formula.

1. First, fully fund those districts that are not successful and are heavily reliant on state aid. The formula, as distinct from the save harmless or minimum due provisions therein, is essentially on target. The failure to fully fund is the main problem facing higher need districts.
2. The failure to acknowledge the serious impact of the Foundation Aid shortfall on those lower performing and lower wealth districts over the past 11 years presents a materially misleading and unfair picture for those districts.
3. The distraction caused by other subsidiary issues, e.g. teacher performance, accountability and, now, distribution of resources among schools within a district, has deflected the focused attention needed to provide all students a sound basic education where ever they reside.

¹ The 57 small city school districts serve 234,000 students and 1.5 million residents.

² These include the Big Four City Schools (115,000 students), high need suburban school districts (approx.. 90,000 students) and low wealth/high need rural school districts (approx.. 100,000 students).

³ For the roundtable discussion, the Senators would welcome comments on whether the current formula, which was predicated on a successful school model, adequately captures current needs of all students and school districts in delivering educational opportunities for lifelong success. They ask that you address the Foundation Aid formula as it relates to the elements of measuring student needs including poverty identified by census data and free and reduced price lunch counts, English Language Learners, district sparsity, special education services and district measurements of property valuation, income wealth and regional cost indexes. The Senators would also welcome a discussion of pupil and district factors not presently or adequately addressed in the formula such as emerging issues regarding social and emotional needs, homeless students, refugees and newly-arrived immigrant pupils as well as students receiving special education. Their ultimate goals are to achieve greater equity in the overall distribution of Foundation Aid, enhance predictability for schools, provide more meaningful opportunities for students and improve the partnership between school districts and New York State.

4. The failure to fund the Foundation Aid formula fully for low performing and low wealth districts is the main reason there has been little or no progress in closing the performance gap between high need districts and other districts.
5. The shortfall in funding Foundation Aid in 2018-19 and 2019-20 may, in fact, be substantially understated due to the changes in state education law and methodologies regarding the computation of that aid vis a vis state law and methodologies as they existed in 2007. For example, do the 2018-19 and 2019-20 numbers use a Foundation Amount computed with an up to date successful schools' analysis? Failure to show the shortfall accurately is materially misleading.
6. The Foundation Aid formula is mischaracterized as primarily an aid formula. It is really at its heart a spending formula. It computes the amount each district must spend, i.e. a spending target, in order to provide an adequate education, i.e. a constitutionally mandated sound basic education per Article XI of the state constitution. Therefore, any shortfall in fully funding the formula aid computed on the basis of that foundation amount is in effect a failure to provide districts with financial resources required by the constitution and necessary to provide students with a sound basic education.
7. The spending target is the central element of the formula. It provides the benchmark which education policy makers must use to insure all districts have the resources needed to succeed. The relation of spending and students' success is clearly shown in the chart below. Only non-city districts spend above the target and only these districts are achieving success as defined by the NYS Education Department. (see Appendix A below)

	TARGET SPENDING P(OP0002) 02 ADJUSTED FOUNDATION AMT/PUPIL DATABASE EDITION 0158B MODEL EDITION SA161-7 0158B	ACTUAL SPENDING 2016 17 Fiscal Summary GEIE 2015 16 school year EXPENDITURE PER PUPIL	SPENDING GAP (GEIE minus Adjusted Foundation Amount)	GRAD_PCT
SCSD AVERAGE	\$ 11,039	\$ 10,876	\$ (163)	77%
BIG 4 AVERAGE	\$ 13,396	\$ 11,683	\$ (1,714)	62%
NEW YORK CITY	\$ 15,865	\$ 13,500	\$ (2,365)	68%
NON CITY AVERAGE	\$ 10,950	\$ 12,461	\$ 1,511	88%

8. While Foundation Aid may not be the precise amount needed to fund a sound basic education in each of the 676 districts in New York, failure to fund over 40% of the Foundation Aid increase promised in 2007,

eleven years later, as is the case in small city districts, is clear evidence the state has not lived up to its obligations under Article XI and failure to so state is materially misleading.

NYSASCSD
Foundation Aid Funding as of 2017-18

	2006-07 FOUNDATION AID BASE	FOUNDATION AID INCREASE PROMISED*	2017-18 ACTUAL FOUNDATION AID	FOUNDATION AID SHORTFALL	2017-18 PERCENT UNFUNDED
SCSD TOTAL	\$ 1,257,611,356	\$ 883,217,603	\$ 1,750,111,692	\$ 413,522,797	46.8%
BIG 4 TOTAL	\$ 1,021,678,884	\$ 586,325,321	\$ 1,400,542,059	\$ 207,462,146	35.4%
NEW YORK CITY	\$ 5,063,348,319	\$ 3,947,852,258	\$ 7,453,251,068	\$ 1,557,949,509	39.5%
NON CITY TOTAL	\$ 5,192,314,940	\$ 2,557,336,448	\$ 6,548,779,564	\$ 1,485,306,791	58.1%
STATE TOTALS	\$ 12,534,953,499	\$ 7,997,972,460	\$ 17,174,244,793	\$ 3,358,681,166	42.0%

9. The failure to fund the Foundation Aid formula fully has had a devastating effect on the more than 100 districts which have been judged as ‘not successful’ under the state’s successful schools’ tri-annual analysis. For example, as of 2014-15, the 8 Maisto districts involved in the small cities law suit, *Maisto et al. v State of New York*,⁴ failed to receive \$192 million per year in Foundation Aid, which aid supports general education expenses.

	TOTAL 2008-09 FOUNDATION AID	ACTUAL 2014-15 FOUNDATION AID NET OF THE GAP ELIMINATION ADJUSTMENT	FOUNDATION AID IF FULLY FUNDED	YEARLY SHORTFALL IN FOUNDATION AID
JAMESTOWN	\$ 40,687,030	\$ 41,958,877	\$ 61,407,372	\$ (19,448,495)
KINGSTON	\$ 39,083,812	\$ 35,276,427	\$ 47,279,474	\$ (12,003,047)
MOUNT VERNON	\$ 62,482,667	\$ 56,730,268	\$ 81,415,299	\$ (24,685,031)
NEWBURGH	\$ 93,804,523	\$ 92,153,101	\$ 132,249,135	\$ (40,096,034)
NIAGARA FALLS	\$ 69,854,050	\$ 69,955,506	\$ 90,402,360	\$ (20,446,854)
PORT JERVIS	\$ 24,512,354	\$ 24,679,998	\$ 37,053,597	\$ (12,373,599)
POUGHKEEPSIE	\$ 47,498,008	\$ 47,062,158	\$ 58,452,062	\$ (11,389,904)
UTICA	\$ 71,034,634	\$ 75,415,738	\$ 127,497,036	\$ (52,081,298)
MAISTO DISTRICTS TOTAL	\$ 448,957,078	\$ 443,232,073	\$ 635,756,335	\$ (192,524,262)

Data from: State Aid Runs DBSAA1 and SA141-5.

10. Legislation was introduced in 2017-18 session to assist the plaintiffs in the 8 Maisto districts in their effort to obtain adequate funding and educational resources. This bill would have established a commission to compute the cost of a sound basic education in these districts on an expedited basis. Once the Maisto case is concluded, the final step toward full relief will be to make that computation. This legislation would have insured that that step was already taken, thereby eliminating any further delay in what has already been an

⁴ The case was filed by 80 parents and students in 2008 seeking a declaration that the 55,000 students in these districts were being denied a sound basic education,

overly long journey. This would also set valuable precedent for the Legislature to follow in the event it decides to expand relief from the 8 Maisto districts to all similarly situated districts throughout the state.

11. Our districts, which face growing problems⁵ such as low attendance and unsafe transportation for which there is no funding support and which struggle under greater fiscal pressures, are taxed almost to the breaking point. Therefore and unlike most non-city districts, small city tax bases cannot adequately respond to those problems. We ask for consideration of changes to current regulations/statutes, together with necessary appropriations, to improve student attendance and safe arrival and departure by reducing or eliminating the mileage requirements currently in place for small cities.
12. NYSASCSD has supported legislation in the past three years which would strengthen the Foundation Aid formula (see Appendix C below). That legislation would add a Poverty Concentration Factor similar to the Sparsity Factor and also add a Successful School Aid which could be targeted to programs and services most needed.

CONCLUSION

There is no question that the many fine administrators and teachers in small city school districts know how to educate children. They only need adequate resources to achieve remarkable success. For example, Dr. Paul Padalino, superintendent in Kingston city school district, implemented a credit recovery program for his high school. The results were astounding. Graduation rates for African-American males went from 40% to 70%. One student completed two years in one. With the loss of state aid from 2011-16, Dr. Padalino had to scale the program back. Resources were taken from other areas to allow it to continue, albeit at less than full capacity.

Another example is Salamanca city school district which is the only district almost wholly on Native American land. Over a mere three year period, under the leadership of Superintendent Robert Breidenstein, the district experienced an increase in native American graduation rates from 41% to 87% as a result of new progressive policies and a substantial aid increase from Washington under federal Impact Aid.

Small city districts and demographically similar districts can realize the same remarkable achievements as Kingston and Salamanca achieved if only they have the necessary educational resources. However, sufficient resources for higher need districts can only be provided through full funding of an improved Foundation Aid formula.

⁵ Brian Whalen, BOE Binghamton CSD and NYSASCSD Vice-President, states that safe student transportation for urban schools has become an increasingly serious issue generating heightened community concern. This is true especially in small cities, where high percentages of families with school aged children experience poverty and are unable to adequately provide for their children's supervised safe arrival to and departure from school. Current mileage restrictions no longer adequately address the health and safety needs of our children growing up in a changing urban environment. . He asks for consideration of legislation and funding for expanded transportation for all students living in small cities

RECOMMENDATIONS

NYSASCSD therefore strongly urges the adoption of the following legislation in the 2020-21 State Budget.

1. Full funding of Foundation Aid for lower performing, lower wealth districts is critically important

Foundation aid is the base financial support for general education. Poorer districts rely heavily on this aid as it represents over two thirds of state aid received. It is computed using spending for students in successful school districts. Successful school districts are defined by the standards established in the *Campaign for Fiscal Equity* lawsuit which established the constitutional minimum funding for a sound basic education. Failure to fund Foundation Aid has left most small city districts with resources insufficient to attain successful school status. With respect to the 57 small city school districts, collectively these districts are owed more than \$413 million *each year* under the formula. Underfunding is the principal impediment to providing their students the education needed to achieve success.

2. Small City School District Successful Schools and Poverty Concentration Count Act

We understand that schools located in poor communities, especially in small city school districts, must provide a host of services to at-risk children and their families: nutritious food, safe spaces for learning in sometimes dangerous environments, social support, including mental health and other health services, among other things. We applaud continuation of Community Schools Grants, made available to schools with low student performance, as an acknowledgment of the many roles played by schools in higher need districts. We propose, however, that an alteration to the Foundation Aid formula and education law section 3602 could fund these necessary student services on an ongoing basis, rather than for only a two-year budget cycle. The changes contained in legislation entitled the Small City Successful Schools and Poverty Concentration Count Act (Appendix C) would provide such continuity. Critical programs that are necessary precursors to learning must be funded *every* year or else the gains made in one year may be lost in the next. Additional funding through the Poverty Concentration Count could also facilitate expansion of safe transportation services and address the high mobility of our student populations which adversely affect attendance which in turn adversely affects achievement.

3. Maisto Sound Basic Education Cost Panel Act

In the event full funding of Foundation Aid is not made part of the 2020-21 State Budget, we strongly urge passage of legislation entitled the Maisto Sound Basic Education Cost Panel Act (Appendix B). This bill would create a panel authorized to develop the cost of a sound basic education in each of the 8 Maisto districts. This bill would expedite delivery of relief to the Maisto districts at the conclusion of the Maisto case by already having determined the amount of relief each district is entitled to receive.

Appendix A
(excerpt from State's Disclosure in *Maisto et al. v NYS*)

KEY POINTS ON THE 2009 ESTIMATES

PERFORMANCE CRITERIA: 80% PASSING

2005-2006, 2006-07 & 2007-08 TESTS FOR 4TH GRADE ELA AND MATH, AND REGENTS ENGLISH, MATH A, GLOBAL HISTORY, AMERICAN HISTORY, LIVING ENVIRONMENT AND EARTH SCIENCE

PASSING = LEVEL 3 OR 4 (4TH GRADE) OR 65+ (REGENTS)

CALCULATION = SUM OF ALL PASSING / SUM OF ALL TEST TAKERS

MISSING DATA: WAS IGNORED
(ONLY ONE DISTRICT-KJ-WAS EXCLUDED DUE TO LACK OF ANY TEST DATA)
(SOME DISTRICTS LACKED CERTAIN TESTS DUE TO GRADE CONFIGURATION)

518 DISTRICTS MET THE CRITERIA

1,254,503 DCAADM (44.7% OF STATEWIDE TOTAL)

DISTRICTS		
	MET STANDARD	DID NOT MEET STANDARD
NYC	0	1
BIG 4	0	4
HI NEED URBAN/SUBURBAN	6	39
HI NEED RURAL	90	66
AVERAGE NEED	290	47
LOW NEED	132	1
TOTAL	518	158

Appendix B

AN ACT to amend the education law, in relation to the computation of the cost of a sound basic education in the Maisto Districts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent: It is the responsibility of the legis-
2 lature under article XI of the constitution of the state of New York to
3 establish and maintain a system that will provide all children an oppor-
4 tunity to receive a meaningful high school education. As shown at trial
5 in State Supreme Court of **Maisto, et al. v State of New York** it is
6 clear that under current law resources sufficient to offer that educa-
7 tion in eight small city school districts, known as the Maisto
8 Districts, are not being provided. Therefore, it is the intention of the
9 legislature to amend certain provisions of the education law to create a
10 Maisto District Sound Basic Education Cost Panel to determine the cost
11 of a sound basic education in each of the districts sufficient to allow
12 such districts to provide all the children in the districts an opportu-
13 nity to receive a meaningful high school education and to maintain heal-
14 thy, vibrant educational communities.

15 § 2. This act shall be known and may be cited as the "Maisto District
16 sound basic education cost panel act".

17 § 3. Section 3641 of the education law is amended by adding a new
18 subdivision 17 to read as follows:

19 **17. Maisto District sound basic education cost panel. There is hereby**
20 **created the Maisto District sound basic education cost panel for the**
21 **purpose of determining the cost of a sound basic education in each of**

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 **the eight Maisto Districts, including Jamestown city school district,**
2 **Kingston city school district, Mount Vernon city school district,**
3 **Newburgh city school district, Niagara Falls city school district, Port**
4 **Jervis city school district, Poughkeepsie city school district and Utica**
5 **city school district. The panel shall consist of six members, to be**
6 **appointed by each of the following: two by the senate majority leader,**
7 **one by the senate minority leader, two by the assembly speaker and one**
8 **by the assembly minority leader. The panel shall meet as often as deemed**
9 **necessary but not fewer than four times, elect a chairperson to schedule**
10 **and conduct such meetings and have the power to appoint such assistants**
11 **either from the legislature, the department or from the private sector**
12 **and expert advisors as necessary to fulfill all duties. Duties of the**
13 **panel include the following:**
14 **a. Selecting an independent consultant to assist in conducting studies**
15 **and drafting the report on the cost of a sound basic education in each**
16 **of the eight Maisto Districts.**
17 **b. Insuring that the studies and reports use both the professional**
18 **judgment method and the foundation aid formula method of determining the**

19 cost of a sound basic education.
20 c. With respect to the foundation aid method, basing the foundation
21 amount on the average spending of successful districts which have
22 achieved at least eighty percent proficiency on two fourth grade state
23 assessments and five state regents examinations, using researched based
24 pupil weightings determined by using New York state student data and
25 using a researched based regional cost index.
26 d. Selecting an independent consultant within ninety days of the
27 effective date of this subdivision and issuing a preliminary report to
28 the senate majority leader, senate minority leader, assembly speaker and
29 assembly minority leader on or before November fifteenth, two thousand
30 nineteen and a final report on or before December fifteenth, two thou-
31 sand nineteen.
32 § 4. This act shall take effect immediately.

Appendix C

AN ACT to amend the education law, in relation to the computation of foundation aid and successful schools aid for small city school districts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "small city
2 successful schools act".
3 § 2. Legislative Intent. It is the responsibility of the legislature
4 under article XI of the constitution of the state of New York to estab-
5 lish and maintain a system that will provide all children an opportunity
6 to receive a meaningful high school education. Certain provisions of the
7 education law are not adequate to provide the funding necessary to
8 fulfill that obligation in certain school districts, particularly those
9 in our small cities, many of which have lower wealth and higher student
10 needs than average and are faced with high concentrations of poverty.
11 Moreover, small city school districts function as centers not only for
12 educational purposes but also for health, civic and public safety uses.
13 These services and uses are not adequately supported by existing educa-
14 tion aid.
15 Therefore, it is the intention of the legislature to amend certain
16 provisions of the education law to insure that the necessary funding is
17 available in those districts to help them provide all their children an
18 opportunity to receive a meaningful high school education and to main-
19 tain healthy vibrant educational communities.
20 § 3. Subdivision 1 of section 3602 of the education law is amended by
21 adding a new paragraph hh to read as follows:

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets
[-] is old law to be omitted.

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S. 2280--A

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1 **hh. "Small city poverty concentration count" for districts in cities**
2 **with populations fewer than one hundred twenty-five thousand persons in**
3 **the most recent census shall mean the number equal to the product of the**
4 **three-year average free and reduced price lunch percent and the**
5 **quotient, computed to three decimals without rounding, of the enrollment**
6 **per square mile divided by two, but not more than three hundred.**
7 **Enrollment per square mile shall be the quotient, computed to two deci-**
8 **mals without rounding, of the public school enrollment of the school**
9 **district on the date enrollment was counted in accordance with this**
10 **subdivision for the base year divided by the square miles of the**
11 **district, as determined by the commissioner.**

12 § 4. Paragraph s of subdivision 1 of section 3602 of the education
13 law, as amended by section 11 of part B of chapter 57 of the laws of
14 2007, is amended to read as follows:

15 s. "Extraordinary needs count" shall mean the sum of the product of
16 the limited English proficiency count multiplied by fifty percent, plus,

17 the poverty count, the small city poverty concentration count and the
18 sparsity count.

19 § 5. Subparagraph 4 of paragraph a of subdivision 4 of section 3602 of
20 the education law, as amended by section 16-a of part YYY of chapter 59
21 of the laws of 2017, is amended to read as follows:

22 (4) The expected minimum local contribution shall equal the lesser of
23 (i) the product of (A) the quotient arrived at when the selected actual
24 valuation is divided by total wealth foundation pupil units, multiplied
25 by (B) the product of the local tax factor, multiplied by the income
26 wealth index, or (ii) the product of (A) the product of the foundation
27 amount, the regional cost index, and the pupil need index, multiplied by
28 (B) the positive difference, if any, of one minus the state sharing
29 ratio for total foundation aid. The local tax factor shall be estab-
30 lished by May first of each year by determining the product, computed to
31 four decimal places without rounding, of ninety percent multiplied by
32 the quotient of the sum of the statewide average tax rate as computed by
33 the commissioner for the current year in accordance with the provisions
34 of paragraph e of subdivision one of section thirty-six hundred nine-e
35 of this part plus the statewide average tax rate computed by the commis-
36 sioner for the base year in accordance with such provisions plus the
37 statewide average tax rate computed by the commissioner for the year
38 prior to the base year in accordance with such provisions, divided by
39 three, provided however that for the two thousand seven--two thousand
40 eight school year, such local tax factor shall be sixteen thousandths
41 (0.016), and provided further that for the two thousand eight--two thou-
42 sand nine school year, such local tax factor shall be one hundred
43 fifty-four ten thousandths (0.0154). The income wealth index shall be
44 calculated pursuant to paragraph d of subdivision three of this section,
45 provided, however, that for the purposes of computing the expected mini-
46 mum local contribution the income wealth index shall not be less than
47 ~~sixty-five~~ fifteen percent [~~(0.65)~~ (0.15)] and shall not be more than
48 two hundred percent (2.0) and provided however that such income wealth
49 index shall not be more than ninety-five percent (0.95) for the two
50 thousand eight--two thousand nine school year, and provided further that
51 such income wealth index shall not be less than zero for the two thou-
52 sand thirteen--two thousand fourteen school year. The selected actual
53 valuation shall be calculated pursuant to paragraph c of subdivision one
54 of this section. Total wealth foundation pupil units shall be calculated
55 pursuant to paragraph h of subdivision two of this section.

S. 2280--A 3

1 § 6. Subdivision 18 of section 3602 of the education law, as added by
2 section 37 of part A of chapter 58 of the laws of 2011, is amended to
3 read as follows:

4 18. Allocable growth amount apportionment. Such amount shall be appor-
5 tioned for a school year pursuant to a chapter of the laws of New York
6 enacted for the state fiscal year in which such school year commences,
7 and shall be allocated to purposes including but not limited to compet-
8 itive grant awards made pursuant to subdivisions five and six of section
9 thirty-six hundred forty-one of this article, the small city successful
10 schools aid allocated pursuant to subdivision forty-two of this section,
11 the foundation aid phase-in amount or other foundation aid increase
12 allocated pursuant to subdivision four of this section and the gap elim-

13 ination adjustment restoration amount apportioned pursuant to subdivi-
14 sion seventeen of this section. In the event that a chapter of the laws
15 of New York enacted for the state fiscal year in which such school year
16 commences is not enacted, the allocations in support of subdivisions
17 five and six of section thirty-six hundred forty-one of this article
18 shall equal the allocations in support of such awards in the base year,
19 and the apportionments pursuant to subdivisions four and seventeen of
20 this section for the current year shall equal the apportionments for
21 such subdivisions four and seventeen for the base year.

22 § 7. Section 3602 of the education law is amended by adding a new
23 subdivision 42 to read as follows:

24 **42. Small city successful schools aid. Commencing with aid payable in**
25 **the two thousand nineteen--two thousand twenty school year, school**
26 **districts in city school districts of those cities having populations**
27 **fewer than one hundred twenty-five thousand inhabitants shall be eligi-**
28 **ble for an additional apportionment as provided for in this subdivision.**
29 **Such districts shall be eligible for an additional apportionment in the**
30 **two thousand nineteen--two thousand twenty school year and thereafter,**
31 **in an amount equal to the product of the three-year average free and**
32 **reduced price lunch percent and the product of four hundred dollars and**
33 **total aidable foundation pupil units to be used for new programs or**
34 **expanded programs with respect to such students first begun or expanded**
35 **in the two thousand nineteen--two thousand twenty school year or ther-**
36 **after approved by the commissioner for the following purposes:**

- 37 **a. class size reduction;**
38 **b. academic intervention services;**
39 **c. response to intervention services;**
40 **d. dropout prevention;**
41 **e. incarcerated youth services;**
42 **f. parent involvement programs;**
43 **g. extended day and extended year programs; and**
44 **h. psycho-social testing.**

45 § 8. This act shall take effect immediately.
