



**THE STATE EDUCATION
DEPARTMENT**

THE UNIVERSITY
OF THE STATE
OF NEW YORK
ALBANY, NY 12234

EXECUTIVE DEPUTY
COMMISSIONER

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Tenure and Seniority Protections for Bilingual and ESOL Teachers/Teaching Assistants

THE ISSUE:

Due to the many fiscal challenges of the state, many districts have been forced to reduce their workforce. By statute, when the position of a teacher/teaching assistant is abolished, the teacher or teaching assistant having the least seniority in the system within the tenure area of the position abolished must be discontinued. An unintended consequence is that as districts hire new bilingual teachers and teaching assistants to serve expanding populations of English language learners (ELLs) and subsequent layoffs are made due to fiscal constraints, districts may be forced to lay off the more junior bilingual or English to Speakers of Other Languages (ESOL) teachers or teaching assistants that they need.

For example, if a district with dual language elementary school programs (with bilingual students) has teachers who hold certification in the early childhood area and in bilingual education and they need to lay off a teacher in the elementary tenure area for budgetary reasons, they must lay off the teacher with the least seniority. Even though the district is required by law to provide bilingual education to its ELLs, the result may be that the qualified bilingual teacher must be laid off while their position is filled by an elementary teacher who may well not be certified to teach bilingual education. If the teacher who fills the position is not certified to teach that position, the only recourse the district has is to bring a section 3020-a proceeding to terminate the teacher for not being qualified.

If a single bilingual tenure area were established, which would require statutory change at the elementary level, abolition of a position in that tenure area could have a similar anomalous result. For example, the least senior teacher may be the only teacher available in the district who is fluent in Chinese, and the teacher retained may be a bilingual teacher fluent in another language. Further, if multiple language-specific tenure areas were established, which would also require statutory change at the elementary level, the result would be very narrow tenure areas with limited protection for teachers. Similar situations may arise in the case of teaching assistants.

THE SOLUTION:

The Regents propose enactment of legislation to require districts, in the event of an abolition of a position, to excess the teacher/teaching assistant with the least seniority in the tenure area of the position abolished, except where the retention of a less senior teacher/teaching assistant fluent in a specific language is necessary for the school district to provide required bilingual/ESOL instruction.



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Mandate Relief and State Aid Claims Flexibility

THE ISSUE:

Given the continuing constraints on revenue at the federal, state and local level, mandate relief becomes vital in order to preserve funding for critical priorities. While many mandates were originally enacted to enhance the rights, protections and performance of students and the fiscal accountability of school districts, not all mandates have produced their intended results. In these fiscal times, it is imperative that a thoughtful and targeted series of changes be made to repeal outdated mandates that have grown too burdensome and costly and which are not essential to improving results for students.

In addition, current Education law provisions impact when adjustments to state aid payments are made, the timing of additional aid payments, and the recovery of aid overpayments. After an established date, if a school district owes money back to the state, it is collected immediately. However, if funding is owed to a school district, the aid claim is placed in a first-come-first-served queue that is funded by an annual appropriation. Given the size of the current queue, school districts will continue to face significant delays in receiving payment from the state for any new claims barring additional annual funds provided for this purpose.

The Regents have acted within the scope of their authority to make regulatory changes to help unburden school districts while maintaining appropriate safeguards and protections for students, parents and the general public, but statutory relief is also necessary.

THE SOLUTION:

Legislation proposed by the Department (S.5247-Marcellino/A.6513-Nolan) would eliminate or reduce a significant number of statutory mandates and provide greater flexibility relating to transportation, educational management services and special education.

Additional legislation (S.4832-Marcellino) would authorize the Commissioner to exercise administrative discretion in order to provide relief to school districts by expanding the funds available to pay claims in the first-come-first-served queue. Where a district owes funds to the state due to an overpayment of aid from an overestimated claim, rather than having those funds flow back into the general state aid fund to offset costs, the funds would instead be applied to aid claims due in the queue. Coupled with the annual state appropriation, the total funds available would significantly reduce the current waiting period for districts, and over time would fully pay off the queue.

The Department will pursue merging these two pieces of legislation, which both serve to provide greater flexibility and relief to school districts, as well as adding the following provisions:

- creating a waiver process, pursuant to Commissioner's review and within defined parameters, for the penalty associated with the late filing of transportation contracts; and
- increasing the current statutory cap (\$100,000) on smaller school district capital projects where the district provides the capital outlay and building aid is provided up front.

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Tuition Rate Setting Methodology for Special Act School Districts & 853 Schools

THE ISSUE:

Tuition reimbursement for Special Act school districts and approved private schools serving students with disabilities (853 Schools) is based on a rate methodology that is established by the Department and approved by the Division of Budget (DOB). Following four years of no growth in tuition reimbursement, in May of 2013, the Department held two meetings of a Special Education Financial Advisory Workgroup to discuss school-age provider fiscal status and recommendations for reforms to the existing tuition reimbursement methodology. Based on provider testimony at these meetings, and the Department's analysis of submitted cost data, a lack of predictable growth to fund increasing costs and the inability to utilize reserve funding for unplanned or emergency expenditures have endangered the Special Act School District and 853 School's capacity to operate essential special education programs for some of the most severely disabled school age children.

Therefore, beginning in November of 2013, the Board of Regents has annually adopted as priorities the creation of a statutory index for establishing tuition reimbursement growth for 853 Schools and Special Act School Districts and the authorization for these schools to establish reserve funds. Since this time, growth in tuition rates for the 853 Schools and Special Act School Districts has been administratively adopted each year. While the tuition growth of recent years has provided a measure of financial relief, stakeholders continue to advocate for a predictable index and the need for a general fund reserve has not been addressed.

THE SOLUTION:

The following legislative proposals would seek to address the financial stability of the 853 Schools and Special Act School Districts and better enable them to provide educational and related services to the students they serve:

- **Create a statutory index for establishing the growth in annual tuition rates.** The current growth in tuition rates is established administratively and is not based a predetermined statutory index. Legislation proposed by the Department (S.5246a- Marcellino/A.6514a-Nolan) would establish a statutory growth index based on an average of state personal income growth would establish predicable and timely tuition increases and allow for improved budget planning.
- **Authorize providers to establish a general reserve fund.** Special Act School Districts and 853 Schools have historically relied on lines of credit to pay for unplanned or emergency expenditures until tuition revenue is received. Authorizing these schools to accumulate a small percentage of tuition revenue in a general reserve fund would reduce the reliance on private borrowing and enable schools to better respond to unanticipated events. Administrative parameters would be developed by the Department to specify the amount that may be deposited and to identify the allowable uses for the funds in addition to corresponding reporting requirements to ensure appropriate oversight.

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Regional Secondary Schools Advisory Council

THE ISSUE:

In light of fiscal constraints, many school districts are at risk of not being able to meet their fiscal obligations and/or are facing educational insolvency due to cuts to critical personnel and programs. Much of the fiscal and educational pressure on districts is at the secondary level.

Current state law has limited options for school districts to create and sustain high-quality collaborative secondary schools allowing only the creation of central high school districts, regional high schools in Suffolk County and Tech Valley High School in the Capital Region.

School districts across the state need a mechanism to build collaborative secondary school partnerships that will provide greater educational services to better ensure that students graduate high school ready to succeed in college and careers – such as high-quality science, technology, engineering and mathematics programs – through more cost-effective and efficient operational delivery.

While the Department had proposed legislation to this effect for several years, it did not receive traction. An issue of this importance deserves the attention of the educational stakeholders to review, discuss, and seek to resolve any issues related to the components of implementation.

THE SOLUTION:

Legislation proposed by the Department (S.6485 Marcellino/A.7934 Nolan) would create a temporary advisory council comprised of members of the Board of Regents, the Department, members of the legislature, governor's office, educational stakeholders, and experts in order to:

- Examine the previously proposed legislation and identify barriers and areas of concern;
- Review regionalization models in other states;
- Identify potential models that would work in New York;
- Make recommendations to the Regents, Department, legislature and governor's office in order to seek enactment of any proposed legislation during the following legislative session.



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Education Equity for DREAMers Act

THE ISSUE:

Thousands of public school students in New York are children of undocumented immigrants. The Office of the State Comptroller estimated, in a May 2013 report on the New York State DREAM Act, that 8,300 undocumented students were enrolled in our public institutions of higher education in the Fall 2012 semester, with most enrolled at CUNY (6,546 students).

New York's enlightened policy enables hundreds of thousands of undocumented students to receive education through the state's P-12 public school system; our state recognizes the value of an investment in career and college readiness for these students. It makes economic sense to help these young students become full participants in New York's economy. Yet their futures are undeniably circumscribed by current immigration law since these young people generally derive their immigration status from their parents. If their parents are undocumented, most students have no mechanism to obtain legal residency, even if they have lived most of their lives in the US.

Current state law, while providing undocumented immigrant students with in-state tuition rates at our public colleges and universities, prohibits these students from receiving state financial aid (i.e., general awards, academic performance awards and scholarships). Denying aid means outright denying many of these students access to higher education. Our society and our economic growth depend on a vibrant, well-educated workforce, but right now, hundreds of thousands of New Yorkers may be denied the opportunity to the education they need to fully participate in our economy. Without access to higher education, these students are far too often forced into the shadows of our society and into economic uncertainty.

THE SOLUTION:

The Regents Education Equity for DREAMers Act would:

- Eliminate Education Law provisions requiring students to be a US citizen or permanent lawful resident to receive general awards, including TAP, academic performance awards, scholarships or other financial assistance.
- Allow certain non-residents, including undocumented immigrants, who graduate from New York high schools or obtain their high school equivalency degree to receive general awards, including TAP, academic performance awards, scholarships or other financial assistance.
- Authorize SUNY, CUNY and community colleges trustees to provide state-aid programs, scholarships or other financial assistance to undocumented aliens who graduate from New York high schools.
- Allow non-residents, including undocumented aliens, who graduate from New York State high schools to receive State funds in the higher education opportunity programs.
- Allow undocumented immigrants and their families, who have a taxpayer identification number, to open a New York 529 family tuition savings account.

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Increasing Access to College and Reducing the Cost to Students through Early College High Schools & PTECH

THE ISSUE:

Traditionally underrepresented and academically and/or economically at-risk students in postsecondary education need strong, innovative programs designed to increase engagement in their high school education and boost levels of participation in college while also reducing the need for remediation; programs that successfully support these goals remain a priority of the Regents and the Department. The Smart Scholars Early College High Schools Program (ECHS) and the NYS Pathways in Technology Early College High Schools (P-TECH) Program are both innovative programs working towards solving the problems these students encounter in postsecondary education.

Smart Scholars ECHS are partnerships between high schools and institutions of higher education that allow students to simultaneously obtain their high school diploma and earn up to 60 transferable college credits (and a minimum of 24 college credits) as part of an organized rigorous 4-year program toward a postsecondary degree or credential at no cost to the student or the student's family. There are currently 24 ECHS 4-year programs to which the Department administers funding. In the 2015-16 school year (SY), 86% of the (1,246) students who started with the first (2012) cohort of this program graduated high school on time with an average of 19 college credits earned.

NYS P-TECH projects are partnerships between high schools, institutions of higher education, and businesses that create individual pathways for students to simultaneously obtain their high school diploma, earn an associate's degree, obtain workplace learning/experience as well as be first in line for a job with the program's STEM related industry partner through a 6-year integrated model. There are currently 32 NYS P-TECH projects to which the Department administers funding. In 2016-17, NYS P-TECH served 3,316 students in the 9th, 10th, and 11th grades. During the 2016-17 SY, 24 of the 32 NYS P-TECH projects had students taking college course and of the 170 different, credit-bearing college courses in their pathways, 89.6% of students earned credits with a grade of A, B, C or P for Pass/Fail courses.

The different models of ECHS and NYS P-TECH programs provide school districts with the flexibility in identifying a model that works best for their students and their unique regional needs; therefore, both of these critical programs need to be supported. However, both programs are funded through multi-year grants that require continuous recruitment for each year of the cycle (five-year cycle for Smart Scholars ECHS and seven-year cycle for NYS P-TECH). Once the grant cycle ends, both programs are left with multiple classes of students (three classes for Smart Scholars ECHS and five classes for NYS P-TECH) for whom there exists no statutory mechanism by which to continue funding.

THE SOLUTION:

The Department supports legislation to preserve and continue ECHS and P-TECH programs to provide New York State students, including those traditionally underrepresented in post-secondary education, with the opportunity to access college-level courses and college degree credits at the high school level.

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Enhanced Discipline Authority of the Licensed Professions

THE ISSUE:

A 2016 article raised concerns regarding the discipline of nurses who pose a public health and safety risk to those in New York highlighting the real-life consequences of the limitations in current law when it comes to the Department's ability to take swift disciplinary against licensed professions when there is a public health or safety risk. The Department seeks legislation to modernize authority over licensed professions to mirror the powers of the Department of Health's Office of Professional Medical Conduct, which already has the authority to issue summary suspensions when it comes to physicians, physician assistants, and specialist assistants.

THE SOLUTION:

The Department supports legislation that would enhance the Department's discipline authority over all licensed professions it oversees by:

- Authorizing the Commissioner or her/his designee, after an investigation and a recommendation by the professional conduct officer, to order a temporary suspension of practice privileges of a licensee or registered entity in extreme cases where there is an imminent danger to the health and/or safety of the public. The current process to suspend a professional license is lengthy and cumbersome, and could put the public at risk. The proposed change in law would enhance public safety while at the same time ensuring the due process rights of the licensee or entity.
- Requiring all licensed professionals to report to the Department any moral character issue(s) upon application for licensure. Currently athletic training, dietetics/nutrition, certified dental assisting and medical physics are the only professions that do not have a moral character requirement upon initial application. A moral character provision should be added to the statutes for these professions to make the requirement uniform across all licensees so that the Department can review this information when making licensure determinations.
- Requiring, at a minimum, that all licensed professionals report to the Department any record of a conviction of a crime in a timely manner. Current law does not require a criminal history background check prior to initial licensure and only requires that licensed professionals report the conviction of a crime upon re-registration every three years (physician, physician assistants and specialist assistants re-register every two years).



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Enhancing Educational Supports for Students with Disabilities pursuing Post-Secondary Study

THE ISSUE:

Differently abled students participating in post-secondary programs must manage traditional and extraordinary challenges which may become barriers to graduation. Access to requisite instructional information is a critical component to their success. Last year the Board advanced a priority proposal to update the Reader's Aid program by expanding the uses for which the funds could be expended, increasing the per student cap to allow for the purchase of student owned assistive technology and expanding the types of schools that could participate in the program. The Department's bill providing for these statutory changes was signed into law (Chapter 350 of the Laws of 2017).

There remains, however, a student population left out of the program that could be well served by the recently updated Reader's Aid program - those with print disabilities. These individuals would also benefit from the recent expansion of allowable use of funds for assistive technology.

THE SOLUTION:

The Regents will propose legislation that would address the educational needs of a wider range of students as they pursue a broader spectrum of opportunities to meet their educational goals by expanding eligibility within the Reader's Aid program to those with print disabilities.