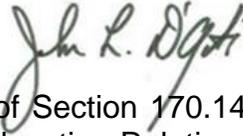




**TO:** The Honorable Members of the Board of Regents

**FROM:** John L. D'Agati 

**SUBJECT:** Proposed Addition of Section 170.14 of the Regulations of the Commissioner of Education Relating to Financial Transparency Reporting Requirements

**DATE:** March 26, 2020 

**AUTHORIZATION(S):**  

### SUMMARY

#### **Issue for Decision (Consent Agenda)**

Should the Board of Regents add a new section 170.14 to the Regulations of the Commissioner of Education relating to financial transparency reporting requirements?

#### **Reason(s) for Consideration**

Review of policy and required by federal statute.

#### **Proposed Handling**

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at its April 2020 meeting. A copy of the proposed amendment is included as Attachment A, and a statement of facts and circumstances justifying emergency action is included as Attachment B.

#### **Procedural History**

The proposed amendment was presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency action at its January 2020 meeting, effective January 14, 2020. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 29, 2020. Because the January emergency action will expire April 12, 2020 a second emergency action is necessary to ensure that the emergency rule remains continuously in effect until it can be permanently adopted at the May 2020 Regents meeting. Supporting materials are available upon request to the Secretary of the Board of Regents.

## **Background Information**

The Every Student Succeeds Act (ESSA) requires that every school district and charter school submit a financial transparency report for inclusion in its report card that provides “the per-pupil expenditures of Federal, State, and local funds, including actual personnel expenditures and actual non-personnel expenditures of Federal, State, and local funds, disaggregated by source of funds,” beginning with actual expenditures from the 2018-2019 school year for school districts and the 2019-2020 school year for charter schools<sup>1</sup>. The United States Department of Education has provided states with significant flexibility to develop these reports in a way that meets the individual needs of the State. As a result, every school district and charter school in New York State will report per-pupil expenditures, disaggregated for each school, pursuant to the regulations and guidelines developed by the Department.

This requirement under ESSA will provide important opportunities for school districts, parents, taxpayers, the State, and other stakeholders to cultivate a better understanding of school finances and help spur local discussions about transparency, equity, accountability, confirmation of best practices, and opportunities for improvements in financial management and educational programming.

Over the past two years, the Department has undertaken a rigorous approach of outreach to stakeholders to develop a report template and uniform guidance in submitting expenditure data. Preliminary draft guidance was published in May 2019, and many stakeholders reviewed the document and provided additional feedback that has been reflected in this proposed regulation and the Department guidance.

The report will be divided into the following sections, which will provide the required expenditure data, as well as important contextual information, to inform the reader of each school’s and school district’s financial and student needs:

- **District-level Context:** Provides district enrollment, student needs, and fiscal capacity;
- **School-level Context:** Provides school enrollment, percentage of economically disadvantaged students, students with disabilities, and English language learners/multi-language learners (ELLs/MLLs); student ethnicity; certified teacher-to-student ratio; average years of teacher experience; and percentage of teachers with 0-3, 4-24, and 25 or more years of experience;
- **Cost Drivers:** Provides student need, fiscal capacity, and regional costs;

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<sup>1</sup> Charter schools currently report actual expenditure data pursuant to section 119.3 of the Commissioner’s regulations, which satisfies the ESSA financial transparency reporting requirements for the 2018-2019 school year. Charter schools shall begin reporting actual expenditures pursuant to the process outlined in the proposed amendment commencing in the 2019-2020 school year.

- **Total Per-Pupil Expenditures:** School-level expenditures, compared to other schools with similar grades served across the State, county, and school district, where applicable;
- **Per-Pupil Expenditures by Instruction/Administration/Other:** School-level and district-level expenditures, including costs for classroom teachers, other instructional salaries and benefits, and administrative salaries and benefits;
- **Per-Pupil Expenditures by Local/State and Federal Funding Sources:** School-level and district-level expenditures, including details for Title I Part A, Title II Part A, Title III Part A, Title IV Part A, IDEA, and all other federal funds;
- **Per-Pupil Expenditures in Selected Program Detail Areas:** School-level and district-level expenditures, including special education, ELL/MLL services, pupil services, community school programs, BOCES services, and prekindergarten;
- **Total Expenditures and Funds Excluded from Per-Pupil Expenditures:** Total dollars expended, including items excluded from the per-pupil amounts such as transportation, charter school tuition, other tuition, debt service, and other categories;
- **District Average Fringe Benefit Rates;** and
- **School District and Charter School-developed Website Link:** A link for readers of the report to go to the school district or charter school website for a page developed exclusively for providing additional important information related to this reporting.

School districts have begun reporting expenditure data, which will be combined with other contextual information already collected by the Department into a report that will be available on June 1, 2020. In subsequent years, the report publication date will be April 1.

### **Proposed Regulatory Change**

The proposed amendment sets forth the financial reporting requirements that school districts and charter schools will be required to comply with to meet the requirements of the federal Every Student Succeeds Act (ESSA).

Commencing on March 1, 2020 (using 2018-2019 school year data) and each March 1 thereafter (using the preceding school year's data), school districts shall be required to submit certain school-level expenditure data to the Department in a manner and in a form prescribed by the Commissioner. Commencing on November 1, 2020 (using 2019-2020 school year data) and each November 1 thereafter (using the preceding school year's data), charter schools shall be required to submit certain school-level expenditure data to the Department in a manner and in a form prescribed by the Commissioner.<sup>2</sup> Such data will be

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<sup>2</sup> Charter schools currently report actual expenditure data pursuant to section 119.3 of the Commissioner's regulations, which satisfies the ESSA financial transparency reporting requirements for the 2018-2019 school year. Charter schools shall begin reporting actual expenditures pursuant to the process outlined in the proposed amendment commencing in the 2019-2020 school year.

used by the Department to develop an ESSA Financial Transparency Report for each school district and charter school.

### **Related Regents Items**

#### **[March 2017 Update](#)**

(<https://www.regents.nysed.gov/meetings/2017/2017-03/meeting-board-regents-public-retreat%20%20Every%20Student%20Succeeds%20Act%20Financial%20Transparency%20Requir%20ement.pdf> )

#### **[April 2019 Update](#)**

(<https://www.regents.nysed.gov/common/regents/files/FB%20Monday%20%20Update%20on%20ESSA%20Implementation.pdf>)

#### **[July 2019 Update](#)**

(<http://www.regents.nysed.gov/common/regents/files/719p12d2.pdf>)

#### **[ESSA Financial Transparency Requirement Powerpoint](#)**

(<http://www.regents.nysed.gov/common/regents/files/P-12%20Education%20-%20Every%20Student%20Succeeds%20Act%20Financial%20Transparency%20Requirement.pdf>)

#### **[Proposed Addition of Section 170.14 of the Regulations of the Commissioner of Education Relating to Financial Transparency Reporting Requirements](#)**

(<https://www.regents.nysed.gov/common/regents/files/120p12a3revised.pdf>)

### **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That section 170.14 of the Regulations of the Commissioner of Education be amended, as submitted, effective April 13, 2020, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform the Regulations of the Commissioner of Education to the requirements of the Every Student Succeeds Act, which requires each school district to submit a financial transparency report for inclusion in its report card beginning with actual expenditures from the 2018-2019 school year and to immediately notify school districts of their obligation to file such report and to ensure that the emergency adoption taken at the January meeting remains in effect until the proposed rule can be permanently adopted.

### **Timetable for Implementation**

If adopted at the April 2020 meeting, the emergency rule will become effective on April 13, 2020. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its May 2020 meeting, after expiration of the 60-day public comment period required under the State Administrative Procedure Act.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 3614, and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq. (Public Law 114-95, 129 STAT. 1802).

A new section 170.14 shall be added to the Regulations of the Commissioner, as follows:

§170.14 Every Students Succeeds Act (ESSA) Financial Transparency Reporting Requirements.

(a) Commencing on March 1, 2020 (using 2018-2019 school year data), and each March 1 thereafter (using the preceding school year's data), each school district shall be required to submit expenditure data for each school in the district to the Department in a form and manner prescribed by the Commissioner consistent with this section.

(b) For the 2018-2019 school year, charter schools will have fulfilled their ESSA reporting requirements pursuant to their reporting obligations under section 119.3 of this Title. Commencing on November 1, 2020 (using 2019-2020 school year data), and each November 1 thereafter (using the preceding school year's data), each charter school shall be required to submit school-level expenditure data to the Department in a manner and in a form prescribed by the Commissioner consistent with this section.

(c) The data provided in subdivisions (a) and (b) of this section will be used by the Department to develop an ESSA Financial Transparency Report, which shall display expenditures reported pursuant to subdivision (d) of this section on a per-pupil basis, and shall include other data already collected by the Department through other means, for

each school district and charter school, to be included in the New York State report card as prescribed in subdivision (m) of section 100.2 of this Chapter.

(d) Such data shall be based, to the greatest extent possible, on actual expenditures as they occurred in each school in the previous school year and shall include, but not be limited to:

(1) total expenditures (except those described in paragraphs (4) and (5) of this subdivision), disaggregated by federal funds and combined State and local funds;

(2) total expenditures (except those described in paragraphs (4) and (5) of this subdivision), disaggregated by the following categories of expenditures: instruction, administration, and all other expenditures;

(3) total expenditures (except those described in paragraphs (4) and (5) of this subdivision) in specific program areas, including but not limited to special education, English language learner/multi-lingual learner services, pupil services, BOCES services, community schools programs, and prekindergarten programs;

(4) expenditures excluded from the per-pupil calculation, including transportation expenditures; tuition payments made to charter schools and other entities; debt service expenditures; expenditures in the school food service fund, the public library fund, the debt service fund, the capital fund, the permanent fund, miscellaneous special revenue funds; expenditures for services provided to charter schools and nonpublic schools; and payments to community-based organizations for prekindergarten programs.

(5) Provided, however, that all amounts for all interfund transfers to and from each fund, and the private purpose trust fund shall not be included in this reporting.

(e) After the school-level data required in this section has been submitted to the Commissioner, the Department shall generate an ESSA Financial Transparency report for each school, school district, and charter school using the data submitted pursuant to paragraph (b) of this subdivision with other public school and district-level data submitted to the Department. The Department shall also include on the report, if requested by the school district or charter school, a link to the school district's or charter school's website to further explain the data available on the ESSA Financial Transparency report.

(f) The 2018-2019 school year reports shall be publicly available no earlier than June 1, 2020, and for the 2019-2020 school year and each school year thereafter, such reports shall be available no earlier than April 1 of the subsequent school year.

(g) The expenditure data provided in paragraph (b) of this subdivision must align, where applicable and to the extent possible, with the data school districts provide in their ST-3 annual financial reports required pursuant to General Municipal Law §30. Charter schools shall submit financial data in accordance with guidance developed by the Commissioner in consultation with the field.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

The proposed addition of section 170.14 of the Regulations of the Commissioner of Education is necessary to implement the Every Student Succeeds Act (ESSA), which requires that every school district and charter school shall submit a financial transparency report for inclusion in its report card that provides “the per-pupil expenditures of Federal, State, and local funds, including actual personnel expenditures and actual non-personnel expenditures of Federal, State, and local funds, disaggregated by source of funds.”

The proposed addition of section 170.14 of the Regulations of the Commissioner of Education implements the financial transparency reporting provisions of ESSA by requiring that school districts submit school-level expenditure data to the Department commencing on March 1, 2020 (using 2018-2019 school year data) and each March 1 thereafter (using the preceding school year’s data). The Department has existing State-required charter school reporting data to satisfy the ESSA financial transparency reporting requirements for the 2018-2019 school year, and charter schools shall begin reporting for actual expenditures from the 2019-2020 school year on November 1, 2020 (using 2019-20 school year data) and each November 1 thereafter (using the preceding school year’s data).

The proposed amendment was presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency action at its January 2020 meeting, effective January 14, 2020. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after expiration of the required 60-day comment period provided for in the State Administrative

Procedure Act (SAPA) sections 201(1) and (5), would be the May 2020 Regents meeting. Furthermore, pursuant to SAPA §203(1), the earliest effective date of the proposed rule, if adopted at the May meeting, would be May 20, 2020, the date the Notice of Adoption would be published in the State Register.

The January emergency rule will expire on April 12, 2020. Therefore, emergency action is necessary at the April 2020 meeting for the preservation of the general welfare, in order to timely conform the Regulations of the Commissioner of Education to the financial transparency reporting provisions of ESSA, which requires such reporting to commence with the 2018-2019 school year data, and to ensure that procedures are in place for schools to timely submit their school-level expenditure data to the Department and also to ensure that the emergency adoption taken at the January meeting remains in effect until the proposed rule can be permanently adopted.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the May 2020 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings.