



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable Members of the Board of Regents

FROM: Diana M. Hinchcliff, Director, Office of Governmental Relations
Diana M. Hinchcliff

SUBJECT: Proposed Regents State and Federal Legislative Priorities for 2011

DATE: November 9, 2010

STRATEGIC GOAL: Legislative Action to Implement Regents State and Federal Legislative Proposals for 2011

AUTHORIZATION(S):

Executive Summary

Issue for Decision

Regents state and federal legislative priorities for 2011.

Reason(s) for Consideration

Regents approval is needed to implement Regents 2011 state budget proposals that require legislation and federal and state legislative proposals.

Proposed Handling

The Board of Regents is asked to discuss and approve these legislative priorities.

Procedural History

Each year the Regents identify policy issues that will require legislation for implementation. Some are carried over from the previous year and some are new. Those requiring a state appropriation are included in the Regents budget proposal. The others are proposed for introduction during the legislative session. The process for developing legislative priorities is synchronized with the process for developing budget proposals.

The Regents priority federal and state legislative recommendations for 2011 propose new, reauthorized or extended statutory authority that would enable SED to carry out legislative mandates and Regents policy. The priorities include proposals for legislation needed to execute actions that would be required by the Regents 2011 budget priorities and funding requests related to federal statutes. Not all budget priorities would require legislation and not all the legislative priorities are related to the budget request.

Background Information

A description of proposed Regents state and federal priority legislation for 2011 is included with this memo. The proposals are grouped by Board of Regents committee. The legislative proposals are aligned with the Regents budget proposals and each program office's strategic goals.

Recommendation

Staff recommends a discussion of the legislative priorities in the respective board committees and approval at the full board meeting.

Timetable for Implementation

November Meeting: Board committees and the full board discuss and if necessary refine proposed legislative priorities. Full board approval of legislative proposals is requested.

PROPOSED REGENTS STATE & FEDERAL LEGISLATIVE PRIORITIES 2011

P-12 EDUCATION COMMITTEE

State

► **Expand the Regents Authority to Intervene in Chronically Underperforming Districts**

As the Board of Regents sets forth its reform agenda, which calls for all school districts to examine their practices with the goal of increasing the college and career readiness of our students, the leadership of the district governance team of the school board and the superintendent has never been more critical. School boards have played a critical role in the history of American public schools and they represent our society's firm belief in the importance of local governance. While effective school boards support and enhance staff instructional focus and student academic achievement, ineffective school boards can negatively impact all levels of district performance and fiscal stability. Although there are only a few, chronically underperforming school districts are sometimes led by dysfunctional school boards driven by issues extraneous to their stated purpose and need to be addressed in an instructive manner.

To emphasize the absolute need for school governance teams to focus on increasing student achievement and maintaining fiscal stability, Education Law section 306, which governs the removal of board members under certain circumstances, should be amended to give the Regents authority to implement a system of progressive intervention in chronically underachieving or fiscally distressed districts, which may in fact lead to the removal of a board member or members. The general framework will be determined through discussions with stakeholder groups, including NYSSBA, NYSCOSS, school officials, and parents and other community members.

► **Expand The Services BOCES Are Authorized To Provide**

Boards of Cooperative Educational Services (BOCES) help increase the effective and efficient delivery of educational services in New York State through sharing among school districts. BOCES are increasingly being asked to serve as regional leaders as well as regional service providers. These activities, some of which would require legislation, would expand the role of BOCES to meet this need:

- Extend to charter schools BOCES' existing capacity to provide services.
- As required by a law enacted in 2010, encourage BOCES participation in regional transportation pilots to identify statutory mandates and other obstacles to implementing regional pupil transportation.
- Provide authority for BOCES to contract with agencies that educate children under the care of the Office of Children and Family Services to provide special education services.

- Give BOCES authority to do claims auditing for component school districts as part of their central business office shared service.
- Give BOCES authority to provide services to the Big Four city school districts (Yonkers, Rochester, Syracuse and Buffalo). Give these districts authority to contract with a neighboring BOCES for critical services if a BOCES' capacity is greater than that of the respective city and to receive aid for those services. A corresponding increase in aid should be provided to the New York City school district to enable it to fund similar programs within the district, which does not have a BOCES. Such regional services could include: arts and cultural programs; career and technical programs; staff development as part of a district-required professional development plan and annual professional performance review; and technology services.
- Allow nonpublic schools to purchase fingerprinting services from BOCES.

► **Improve the Academic Achievement of English Language Learners**

Funding should be requested to implement a strategy to support the diverse learning needs of English language learners (ELLs). The strategy elements are:

Parent Education Initiative. (1) Provide parents educational programs to increase their own proficiency in the English language (including English as a Second Language (ESL) classes and General Educational Development (GED) programs). (2) Provide activities for parents that will demonstrate ways in which they can support their children's learning outcomes. (3) Provide workshops for parents on setting and achieving goals for college readiness.

Teacher Recruitment. Subsidize credits for the SED bilingual education extension certificate or English to Speakers of Other Languages (ESOL) certificate requirement that provide teachers the skills and knowledge to supply appropriate services to ELLs. The two options available are: (a) subsidize the 3-credit course required to get the supplementary bilingual education extension; or (b) subsidize the 12 semester hours needed for the full bilingual education extension certificate. Also, target additional resources to recruitment of bilingual and ESOL teachers.

Virtual/Blended Learning. Develop a high-quality pilot program to use virtual/blended learning as a strategy for improving the achievement of ELLs. The American Recovery and Reinvestment Act (ARRA) Enhancing Education Through Technology (EETT) competitive grant program is one option. EETT projects have four theme-oriented, evidence-based priorities, one of which supports limited English proficiency/English language learners (LEP/ELLs) and students with disabilities. The intent of this pilot will be to increase opportunities for ELLs to benefit from virtual/blended learning.

Federal

► **Reauthorize the Elementary and Secondary Education Act (No Child Left Behind)**

The Regents approved a detailed set of ESEA reauthorization priorities in 2007, a streamlined set of recommendations in 2009 and in April 2010 SED submitted formal comments on the Obama administration's *A Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act*. The education committees in both houses of Congress are developing draft reauthorization legislation. SED will provide specific comments and recommendations that support the Regents reform agenda during the drafting process and after the House and Senate bills are released. The Regents ESEA recommendations focus on: accountability, assessments, school improvement, teachers and leaders, early childhood education, data systems and funding.

► **Preserve and Expand E-Rate, Broadband Access and Network Neutrality (shared with the Office of Cultural Education)**

E-Rate was created by the 1996 Telecommunications Act to fund telecommunications and Internet services, and cabling and network infrastructure (but not hardware) for schools and libraries. E-Rate funding has enabled 97 percent of schools and nearly all public libraries to have basic Internet access, but faster connections are needed to meet current speed and capacity demands. Plans for increasing capacity to support today's high-tech education tools are included in the Federal Communication Commission's National Broadband Plan, the U.S. Department of Education's National Education Technology Plan, and proposed legislation. The FCC approved an initial set of improvements in September and additional changes are expected in 2011. SED submitted comments on the FCC's proposed E-Rate changes and USED's Educational Technology Plan and has been engaged in discussions with key policymakers in the House and Senate. The Regents technology recommendations include: expanding broadband access to schools and libraries, particularly in rural areas; permanently exempting E-Rate from the Anti-deficiency Act, which would improve funding access; simplifying the E-Rate application process; increasing funding to meet demand; not imposing any additional federal requirements for blocking and filtering access to Internet content; and preserving the free and open nature of the Internet based on the principles of non-discrimination, transparency and meaningful enforcement policies.

AEWD COMMITTEE

State

► Enable SED to Provide More Protection for Students Attending Licensed, Non-degree-granting Proprietary Schools and to Exercise More Oversight Over These Schools

Since 1990, when the statute governing non-degree-granting proprietary schools was last amended, the number of schools has increased and their nature has changed. There are slightly over 450 currently licensed, registered, or certified schools, approximately 200 schools with pending applications, and 1,000 or more schools currently operating unlicensed (some may be operating under a legal exemption). While formerly these schools offered strictly business or trade programs, today they offer more sophisticated hybrid programs such as medical office assisting in which coding and recordkeeping are combined with clinical service such as phlebotomy.

Education law should be amended to give SED appropriate authority to continue to regulate this changed industry, monitor and supervise these schools adequately and generate revenue through an increased fee to support system upgrades and redesigns necessary to modernize and improve oversight. Registered business schools and licensed private schools should be consolidated into one designation, eliminating the artificial distinction between these types of schools and reflecting the current heterogeneous nature of the training programs offered. Schools applying for licensure should be allowed to operate while SED is reviewing their application; this will bring more schools into compliance and increase protection for students. Students should be able to access information about schools and teachers to help them make informed decisions about which school to attend. This also would enable SED to match students with similar training at other schools if a school closes. Schools should be required to provide more detailed and in-depth financial information so SED can assess the risk not only to students' opportunity to complete their training but also to SED's tuition reimbursement account. Teachers in non-degree-granting proprietary schools should be allowed to teach at any licensed proprietary school in the state. The schools would benefit by being able to transfer teachers from one location within a school chain to another without the teachers needing to be dually licensed and they would have a larger supply of substitute teachers. Salaries may become more competitive and teachers with a record of successful student course completion and high placement rates may be more in demand from other schools. These changes would protect students, the schools and taxpayers.

Federal

► Reauthorize the Workforce Investment Act (WIA)

The Regents have approved recommendations for WIA reauthorization for the past five years, but reauthorization has been delayed continually. This year SED worked

with the New York State Department of Labor to develop joint recommendations. House and Senate committees have been working on drafting legislation and reauthorization is, once again, expected in 2011.

WIA connects postsecondary career and technical education and training, adult education and family literacy, and vocational rehabilitation for out-of-school youth and adults. It has three components: Title I—Workforce Investment Act; Title II—Adult Education and Family Literacy Act; Title IV—Vocational Rehabilitation Act. The Regents WIA recommendations focus on: improving collaboration among program areas; ensuring adequate funding for all parts of the system; meeting the needs of special populations; targeting funding to improve postsecondary and career success; improving the school-to-work transition for students with disabilities; and increasing the supply of qualified vocational rehabilitation counselors.

HIGHER EDUCATION COMMITTEE

State

► Tenured Teacher Hearings

Section 3020-a of Education Law specifies the procedures school districts must follow to discipline or discharge school employees who have completed a probationary period of professional employment and have been granted tenure by the employing school board. SED's role in the tenured teacher disciplinary process is primarily ministerial. We have little or no ability to control the cost of the tenured teacher hearing process, which has substantially risen over the past several years due to an increase in both the length of cases and the daily rates that the independent contractor arbitrators charge. Neither the school district nor the tenured employee pays any of the arbitrator or court reporter expenses; therefore there is no incentive to resolve these cases quickly.

Funding should be requested to fully support the annual cost of this program and retire an accumulated deficit. SED receives an appropriation of \$3.8 million but the annual cost continues to exceed projections, which are estimated to be more than \$6 million this year. Amendments to law would be needed to implement a proposal to reduce this fiscal burden on the state and consequently on SED. It is recommended that the Regents advance one of these legislative options:

- 1) Replace the existing independent contractor arbitrators (hearing officers) with SED administrative law judges (ALJs) to conduct §3020-a hearings. With an appropriation of approximately \$6 million, ALJs employed by SED would save the state money based on projected expenditures because they would handle approximately twice the number of cases, based on current number of hours spent, and significantly reduce the overall time it takes to resolve each case by scheduling consecutive hearing days. Furthermore, this proposal would result in cost savings to school districts because cases would be decided more quickly, enabling them either to return the teacher to the classroom or hire a permanent replacement. Significantly, many state agencies, including SED's Office of the Professions, use this ALJ model to handle administrative hearings.
- 2) Limit SED's expenditure to its annual appropriation. Under this scenario SED would estimate the number of days that independent contractor arbitrators could bill based on the previous year's hearings. This figure would be divided into SED's total appropriation to create a "state subsidy per billable hearing/study day". Any additional expense incurred by the arbitrator over and above the state subsidy would be paid equally by the school district and the certificate holder's union/association. SED would reconcile the year's expenses at the end of each fiscal year. If there is a shortfall SED would request funding in the subsequent year's state budget to reimburse the arbitrators for the non-reimbursed days based on the same rate.

Possible variations on this approach would be:

- SED would reimburse hearing costs for a certain number of days; any subsequent expenses would be shared equally by the school district and the certificate holder's union/association
- The cost would be split among the state, the school district and the certificate holder's union/association

However, neither of these options would guarantee that expenditures would be limited to the appropriation.

► TAP Eligibility For Full-time Students Enrolled In Early College High School Programs

Early college high school programs combine high school and college courses, making it possible for students to earn up to two years of college credit by the time they finish high school. These programs also reduce or eliminate the need for students to take remedial courses in college, resulting in a more efficient educational system and saving both the students and colleges money. The cost of these programs exceeds state aid. Eligible students enrolled in early college high school programs should be allowed to use the state's Tuition Assistance Program (TAP), with appropriate safeguards, to help pay for the collegiate component of the program. This proposal will be an appropriate approach to allowing eligible students in early college high schools to begin to use their TAP funds when they undertake their college course work while still completing the requirements for high school graduation.

► Revise The Statutory Standards Of Academic Progress For Students Receiving Tuition Assistance Program Funds

Section 665 of Education Law specifies the minimum accumulation of credit and minimum grade point average a TAP recipient must maintain each term to continue to receive aid. This standard has been in place since 2006. The 2010 enacted state budget included a new Standard of Academic Progress that applies only to the 2010-11 state fiscal year. All sectors of higher education agree that a permanent amendment to statute is needed to ensure that students who need no or only some remedial instruction have sufficient time to complete their academic program and remain eligible for TAP. The amendment would: (1) update the Standard of Academic Progress to raise appropriately the level of credit accumulation and grade point average needed for students engaged in non-remedial courses to continue to receive TAP; and (2) authorize the Commissioner to adopt alternative standards of academic progress for students taking remedial courses and for other students, including students with disabilities, for whom the general standard would not be appropriate.

CULTURAL EDUCATION COMMITTEE

Federal

► **Preserve and Expand E-Rate, Broadband Access and Network Neutrality (shared with P-12 Education)**

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► **Reauthorize the Museum and Library Services Act (MLSA)**

Reauthorization of the Museum and Library Services Act was delayed in 2010; it is expected in 2011. The law has two components: Library Services and Technology Act (LSTA) and Museum Services Act (MSA). The Regents recommendations for LSTA include: expanding the allowable uses of state grants; supporting education and professional development for library personnel; and improving data collection. Recommendations for MSA include: increasing funding to support technology upgrades; capacity building; community engagement; research; and development of the next generation of museum professionals.

► **Enact the Preserving the American Historical Record (PAHR) Act**

The Preserving the American Historical Record Act, which was introduced in both houses of Congress in 2010, would provide funding for each state and territory to support the preservation of and greater access to state and local archival records held by state and local governments, historical societies, libraries and related organizations. SED helped draft this bill, secure sponsors for its introduction, and build congressional support.

Funding for Federal Programs

Each year the Regents approve federal funding priorities. These are shared with the New York congressional delegation and House and Senate appropriations committees. The list of priorities for 2011 will be based on the Obama administration's and each house's budget proposals and targeted to support the Board's reform agenda and Race To The Top. Both houses of Congress are expected to reconvene on November 15, the first day of the Board of Regents meeting, to complete the federal education budget for the current fiscal year (October 1, 2010-September 30, 2011). A list of Regents federal funding priorities for 2011 will be available for the December meeting.