



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

TO: P-12 Education Committee and
Subcommittee on State Aid

FROM: John B. King Jr.

SUBJECT: Mandate Relief and Flexibility

DATE: February 1, 2011

STRATEGIC GOAL: 1, 2, 3 and 5

AUTHORIZATION(S):

SUMMARY

Issue for Discussion

What draft mandate relief options can the Regents recommend that preserve essential safeguards for student health, safety and education?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

This question will come before a joint meeting of the Regents Subcommittee on State Aid and the P-12 Education Committee at their February 2011 meeting.

Procedural History

The Regents approved their State Aid proposal for school year 2011-12 in December 2010 which committed to subsequently developing additional cost containment and mandate relief proposals. In February, the Regents will discuss a set of draft mandate relief options intended to increase flexibility and reduce requirements in ways that do not adversely impact the health and safety of students and essential elements of education reform.

Background Information

The Regents carefully crafted this year's State Aid proposal to retain those critical funding directions necessary to continue the State's progress toward educational adequacy, despite the State's worsening revenue picture. The Regents recommended that the State continue to phase in the Foundation Aid formula and continue to increase support for universal pre-kindergarten. In order to preserve funding for these critical priorities, the Regents recommended mandate relief, cost-containment strategies including mandate relief, regional transportation, and expanded use of BOCES shared services and special education programs. While all of these mandates were originally enacted for specific purposes that were envisioned to enhance the rights, protections and/or performance of students, not all have produced the desired improvement in performance and outcomes.

The approach the Department has taken in identifying draft mandate relief options is described below and further delineated in the attached chart. While many of the options relate to the requirements for special education, there are also suggestions for mandate relief in the areas of school operations, facilities, and pupil transportation, as well as curriculum and instruction and teacher certification.

Draft mandate relief options in the area of School Operations include the following ideas:

- Providing for increased options in business office functions such as claims auditing and loosening internal audit requirements for a greater number of school districts;
- Relieving districts of the necessity to have an Early Grade Class Size Reduction Plan; and
- Promoting efficiency and cost-effectiveness through greater flexibility in the area of purchasing.

There may also be cost saving opportunities in Pupil Transportation services, such as:

- Standardizing an annual school calendar to support greater efficiencies in student transport; and
- Standardizing "bell times" to enable the optimum utilization of buses and bus routes.

In the area of School Facilities, draft options incorporate:

- Eliminating certain reporting requirements which demand significant district and SED resources and which, in some instances, exceed federal requirements; and

- Eliminating the Wicks Law requirement for school districts, realizing potentially significant savings.

Other draft mandate relief options reflect the areas of Curriculum and Instruction:

- Eliminating some middle school mandates, including home and career skills, technology education, and library and information skills; and
- Phasing out Academic Intervention Services as Response to Intervention gains momentum as an approach to supporting students' learning goals.

Teacher Certification mandate relief options include:

- Greater flexibility for teaching within the Limited Certificate while pursuing the Full Certificate; and
- More latitude within administrative certifications for small school districts.

The Special Education mandate relief recommendations center on the following goals:

- Aligning the required membership of Committees on Special Education with the federal IEP team members;
- Streamlining the evaluation requirements and procedures; and
- Eliminating certain planning and reporting requirements.

The Department acknowledges that the cost of special education often consumes a significant percentage of districts' budgets and that the federal support for special education has not kept up with the promises made by the federal government. It must be recognized that many of these expenditures are important and directly related to the more intensive needs of students with disabilities. However, to address the fiscal concerns of school districts, the Department has again reviewed certain administrative requirements in New York State law and regulations that are not otherwise required by federal law and regulations. In examining these requirements, we have attempted to identify those where the cost of implementation appears to exceed the benefit; where there should not be a direct negative impact on the provision of special education services, and where the redirection of those funds is more likely to have a positive impact on student performance.

Equally important is taking specific actions that will result in lower special education expenditures while contributing to improved performance. Some of the key actions to be considered include, but are not limited to:

- Controlling classification rates of students with disabilities by instituting research-based general education instructional programs, such as Response to Intervention;

- Broadening the school district-run options offered, or promoting the development of consortium programs with neighboring districts;
- Instituting appropriate conduct and discipline policies and procedures in school districts with a focus on positive behavioral interventions and supports (PBIS) as well as access to resources (including other community based services) to address the higher-level needs of students with more severe behavioral and mental health issues;
- Promoting a greater priority on building relationships of trust and strong communication with parents that result in more individualized responses to meet students' needs;
- Providing high quality programs aligned with the learning standards to students with disabilities, including the frequent review of data reflecting students' progress and the adjustment of instructional methodologies when progress is not occurring, thereby making it more likely that some students can benefit from reduced levels of service as they grow older and reducing the need for extended years in high school; and
- Providing improved teacher preparation and professional development on differentiating instruction based on data.

The proposed approach to mandate relief seeks to retain and strengthen educational programs for students while streamlining requirements where the cost of implementation exceeds the benefits.

Timetable for Implementation

The Executive proposal is expected by February 1, 2011. The recommendations resulting from the Governor's Mandate Relief Redesign Team will be made on March 1 and the Governor will include them in budget negotiations. Legislative action is due April 2011. The laws that result are expected to affect school district programs for school year 2011-12.

**Draft Mandate Relief Options
New York State Board of Regents
February 2011**

Mandate Relief	Federal or State Law, or Regulation	Dedicated Funding Provided	Past Regents or SED Proposal?
School Operations			
1 Annual Census--Change to Every Two Years	State Law	None	No
2 Provide flexibility by consolidating Textbook and Software aids	State Law	Categorical Aids	Yes
3 Provide flexibility in claims auditing	State Law	None	Yes
4 Allow School Districts with 10,000 or More Students to Audit Samples of Claims	State Law	None	No
5 Allow School Districts with Fewer than 1,000 Pupils to Forego an Internal Audit Function	State Law	None	No
6 Allow School Districts to Enter Into Credit Card Contracts of National Scope	State Law	None	No
7 Clarify that BOCES has the Authority to Contract for Telecommunicatios on Behalf of their Component School Districts	State Law	None	No
8 Eliminate the requirement that school districts have an Early Grade Class Size Reduction Plan	Regulation	None	Yes
9 Eliminate the requirement that school districts have a Shared Decision Making Team	State Law, Regulation	None	No
10 Provide school calendar flexibility to allow school districts outside of NYC to hold regular days of session in July and August.	State Law	Foundation Aid	Yes

Mandate Relief	Federal or State Law, or Regulation	Dedicated Funding Provided	Past Regents or SED Proposal?
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School Operations

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|---|-----------|------|-----|
| 11 Enable local government to hold reverse auctions, in which vendors bid against one another for lower prices | State Law | None | No |
| 12 Allow for local governments to piggyback on other states' and local governments' contracts | State Law | None | Yes |
| 13 Allow for piggybacking on Federal General Services Administration Schedule 70 IT, Federal e-government, and national defense authorization act contracts | State Law | None | |
| 14 Allow for contracts to be awarded by "best value"--a power the State already has | State Law | None | |
| 15 Provide local governments with the option of publishing procurement notices in the Contract Reporter instead of publishing in newspapers. | State Law | None | |

Pupil Transportation

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| 16 Clarify that BOCES and School Districts have the Ability to Coordinate Nonpublic school Transportation Through Legislation | State Law | Transportation Aid | No |
| 17 Require BOCES District Superintendents to collaborate with school districts, non-public schools and special education programs in designating bell times that allow for optimum utilization of school buses and school bus routes | None | Transportation Aid | No |

Mandate Relief	Federal or State Law, or Regulation	Dedicated Funding Provided	Past Regents or SED Proposal?
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Pupil Transportation			
18 Enact legislation/regulation that would require adoption of a State Law standardized annual school calendar to avoid conflicts wherein school buses are deployed on days when public school districts are otherwise closed	State Law	Transportation Aid	No

School Facilities			
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19 Eliminate the Wicks Law for school construction	State Law	Building Aid	Yes
20 Eliminate Annual Visual Inspections	State Law	None	No
21 Eliminate compliance with the recently adopted Smart Growth Legislation (2010) for the vast Majority of school projects. Retain it only for work in new land acquisition and new construction.	State Law	None	No
22 Eliminate School Facilities Report Card	Regulation	None	No
23 Eliminate State requirements for reporting beyond the federal requirements of the Asbestos Hazard Emergency Response Act	Federal and State Law	None	No

Mandate Relief	Federal or State Law, or Regulation	Dedicated Funding Provided	Past Regents or SED Proposal?
SPECIAL EDUCATION			
24 Eliminate the Special Education Space Plan	State Law	None	Yes
25 Eliminate Obsolete Requirement that Children of Vietnam Vets Must File a Form	State Law	No Cost Now	Yes
26 Simplify and clarify some of the requirements for service provision and billing for students with disabilities who are residents of the State attending nonpublic schools located in the State and are dually enrolled in public schools for purposes of special education and receive services pursuant to an individualized education service program (IESP) developed by the CSE of the school district of location in the same manner and with the same contents as an IEP.	State Law, Regulation	Public Excess Cost Aid, Federal IDEA	Yes
27 Eliminate requirements that go beyond federal law of having the school psychologist and an additional parent member as members of the CSE and the requirement for a physician to be a member of the CSE if requested by the school or parent 3 days before the meeting.	State Law, Regulation	Federal IDEA	No
28 If the CSE membership is revised to reflect the federal minimum participants, eliminate the requirement that School districts with more than 125,000 inhabitants must appoint Subcommittees on Special Education to the extent necessary to ensure timely evaluation and placement of students with disabilities. The school psychologist is a required member whenever a new psychological evaluation is reviewed or a change to a program option with a more intensive staff-to-student ratio is recommended. Subcommittees must submit an annual report to CSE. The parent has the right to disagree with subcommittee and refer to CSE.	State Law, Regulation	Federal IDEA	No

Mandate Relief	Federal or State Law, or Regulation	Dedicated Funding Provided	Past Regents or SED Proposal?
SPECIAL EDUCATION			
29 Eliminate the requirement that an individual evaluation include specific assessments to be conducted as part of the initial evaluation: physical examination, individual psychological evaluation, social history, observation, other appropriate evaluations and functional behavioral assessment (FBA) when behavior impedes learning.	Regulation	Federal IDEA	No
30 Eliminate the requirement for written consent of the parent to initial provision of special education services in a 12-month special service and/or program.	State Law / Regulation	Federal IDEA	Yes
31 Eliminate the process for a school psychologist to determine the need to administer an individual psychological evaluation and requirement for a written report when such evaluation is determined not to be necessary.	State Law / Regulation	Federal IDEA	No
32 Eliminate the requirement that when a child has been placed in a residential program or is at risk of a residential placement, parents must be notified of when their child's right to a free appropriate public education (FAPE) will end.	State Law / Regulation	Federal IDEA	No
33 Eliminate the requirements that BOEs have plans and policies for appropriate declassification of students with disabilities – regular consideration for declassifying students when appropriate and the provision of educational and support services upon declassification.	State Law / Regulation	Federal IDEA	No

Mandate Relief	Federal or State Law, or Regulation	Dedicated Funding Provided	Past Regents or SED Proposal?
SPECIAL EDUCATION			
34 Eliminate the requirement that the CSE/CPSE must provide a copy of the State's handbook for parents of students with disabilities or a locally approved handbook when a student is referred for special education.	State Law	Federal IDEA	No
35 Eliminate the requirements for written consent of the parent prior to initial provision of special education services in a 12-month special service and/or program.	State Law / Regulation	Federal IDEA	Yes
36 Eliminate the requirement that the Commissioner approve the provision of early intervention services by approved preschool providers.	State Law	Federal IDEA	No
37 Reduce the two year statute of limitations on commencement of an impartial hearing to the federal standard of one year.	State Law / Regulation		Yes
38 Eliminate the requirement that membership of the CPSE includes an additional parent member and a municipality representative, except that the parent can decline the participation of the additional parent member and the attendance of the municipality representative is not required for a quorum.	State Law / Regulation	Federal IDEA	No

Mandate Relief	Federal or State Law, or Regulation	Dedicated Funding Provided	Past Regents or SED Proposal?
SPECIAL EDUCATION			
39 If the requirement of parental choice of evaluator is repealed, eliminate the requirement that the BOE must provide parent with list of approved evaluators in the geographic area. (See Note 1)	State Law / Regulation	Federal IDEA	No
40 Eliminate the requirement that the parent selects the preschool evaluator from list of approved evaluators.	State Law / Regulation		No
41 Eliminate the requirement that an LEA must provide for allocation to approved providers of an amount equal to the per capita share of IDEA Part B funds provided to the LEA.	State Law	Federal IDEA	No
42 If the CSE membership is revised to mirror the federal requirement, eliminate the notice of meeting to inform the parent(s) of his or her right to request, in writing at least 72 hours before the meeting, the presence of the school physician member of the CSE.	State Law / Regulation	Federal IDEA	No
43 If the CSE membership is revised to mirror the federal requirement, repeal the requirement that, if the meeting is being conducted by a subcommittee on special education, the meeting notice inform the parent(s) that, upon receipt of a written request from the parent, the subcommittee shall refer to the CSE any matter on which the parent(s) disagrees with the subcommittee's recommendation concerning a modification or change in the identification, evaluation, educational placement or provision of FAPE to the student.	State Law / Regulation	Federal IDEA	No

Mandate Relief	Federal or State Law, or Regulation	Dedicated Funding Provided	Past Regents or SED Proposal?
SPECIAL EDUCATION			
44 Repeal procedures for the appointment of students to State-supported schools.	Regulation	Federal IDEA	No
45 Repeal requirements for written notice to parents of students with disabilities who are aging out of the school system.	State Law / Regulation	Federal IDEA	Yes
CURRICULUM AND INSTRUCTION			
46 Eliminate requirements for Technology Education, Home and Career Skills, and Library and Information Skills	Regulation	None	
47 Phase out Academic Intervention Services while phasing in Response to Intervention programs	Regulation	None	Yes
48 Eliminate the requirement that school districts observe Conservation Day	State	None	
CERTIFICATION OF TEACHERS AND ADMINISTRATORS			
49 Revise existing regulations to provide more teacher certification flexibility by allowing for a teacher to expand the Grade levels of teaching for 2 years (under a Limited Certificate) while he/she completes the required course work for the full certificate authorizing teaching at that level.	Regulation	None	
50 Modify existing regulations to clarify that the School District Leader certificate is the only certificate required for a Superintendent also performing the roles of principal or business official, in small school districts.	Regulation		

Mandate Relief	Federal or State Law, or Regulation	Dedicated Funding Provided	Past Regents or SED Proposal?
OTHER			
51 Eliminate the requirement for school districts to notify students if their Body Mass Index is high.	State Law	None	
52 Eliminate annual corporal punishment report as school climate survey is phased in	Regulation	None	
53 Eliminate Violent and Disruptive Incident Reporting as School Climate Survey is phased in	Federal/ State Law	None	Yes

Notes

Note 1. Draft mandate relief option, # 39, could be complemented by a proposal to give school districts greater responsibility for preschool special education by capping the growth of county contributions for preschool programs and beginning to charge school districts for additional growth. For school age students, the school district is responsible for completing the evaluation and virtually always does so with school district employees. For preschool age students, virtually all evaluations are conducted by approved private evaluations sites, many of which also run approved preschool programs. In addition, the choice of evaluator is made by the parent, not the district.