



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

**FROM:** Elizabeth R. Berlin *Elizabeth R Berlin*

**SUBJECT:** 2017 State Legislative Priorities

**DATE:** December 1, 2016

**AUTHORIZATION(S):** *Mary Ellen Eina*  
**SUMMARY**

### **Issue for Decision**

The Regents advance state legislative priorities every year. At the October and November meetings, the relevant committees of the Board reviewed and discussed proposals to be advanced during the 2017 legislative session. At the December meeting, the relevant committees of the Board will approve certain proposals to be advanced during the 2017 legislative session.

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

Regent's approval of certain legislative priorities.

### **Recommendation**

It is recommended that the Regents affirm support for last year's proposals as well as approve new proposals for the 2017 legislative session as follows:

#### **P-12-**

Tenure/Seniority Protections for Bilingual and ESOL Teachers  
Streamlining Prekindergarten Programs  
Establishing a Tuition Rate Setting Index  
Mandate Relief for School Districts  
Accelerating State Aid Claims  
Regional Secondary Schools Advisory Council  
Supporting Struggling School Districts

#### **Higher Education-** DREAMers



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

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### *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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## Streamlining Prekindergarten Program Standards and Funding

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### *THE ISSUE:*

Currently, the Department administers seven separate and distinct prekindergarten programs in the State of New York. Each of these separate prekindergarten programs has a unique funding structure with varying requirements for quality standards and mechanisms for data collection and reporting. For school districts and community-based organizations that receive funding for multiple prekindergarten programs, these varying requirements become an administrative burden at the local level, and inhibits the seamless provision of high-quality prekindergarten programs to our youngest learners.

In addition, four of these programs are funded through a competitive procurement process. There is no guarantee of ongoing funding for these initiatives and that creates uncertainty for school districts and families who have counted on the school district to provide prekindergarten programs. Upon the expiration of the contract period, the funds would need to be re-bid requiring currently-funded school districts to compete again in order to continue offering prekindergarten programs. The impact of losing such funding could lead to program closure and disruption in services for students.

### *THE SOLUTION:*

The Regents support legislation that eliminates fragmentation in the current prekindergarten system by expanding the allocation process that has been used for the Universal Prekindergarten Program (UPK) since 1997 to all prekindergarten programs. This would occur through a multi-year phase in of prekindergarten program funding streams being absorbed into the school districts UPK allocation formula as competitive contracts expire. In addition the Regents support aligning program standards, eligibility requirements, and oversight processes.

The creation of a single unified prekindergarten system would:

- Allow school districts and the Department to focus efforts on increasing the quality of prekindergarten programs by providing technical assistance and professional development, rather than spending staff time on various program and procurement administrative requirements;
- Provide school districts and families with the assurance of ongoing, coordinated, and dependable funding for early childhood educational programs in their communities; and
- Enable school districts and community based organizations to start, improve, and expand Prekindergarten programs in a planned and thoughtful manner.

While statutory changes to create a single age of three for program eligibility would be needed in order to unify current programs, it is important to note that the Regents fully support universal prekindergarten for four-year olds, and recommend that before creating additional funding for three-year olds, the State should ensure the provision of prekindergarten services to these children. Currently only 63% of New York State's eligible four-year olds are being served.

For more information contact the  
Office of Governmental Relations, New York State Education Department, (518) 486-5644



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

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### *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.4215-Flanagan/A.5061-Nolan of 2016) 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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## Mandate Relief and Accountability

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### *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.

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.7843-Marcellino/A.5060A-Nolan of 2016) would eliminate or reduce a significant number of statutory mandates and provide greater flexibility relating to curriculum, transportation, educational management services and special education. The legislation includes provisions that would:

- Allow the awarding of transportation and cafeteria and restaurant contracts based on best value rather than solely on lowest price;
- Initiate a feasibility study to allow districts and BOCES to save on credit card costs;
- Exempt school districts from the Smart Growth regulations for reconstruction, renovation, and addition projects;
- Eliminate the requirement for back-lit school bus signs;
- Replace the mandate on Conservation Day with Earth Day academic instruction;
- Streamline the provision of special education services to parentally-placed students with disabilities;
- Reduce delays and due process costs by shortening the statute of limitations to request a special education due process hearing;
- Eliminate certain duplicative aging out reporting requirements; and
- Further align Committee on Special Education and the Committee on Preschool Special Education membership with the federal Individuals with Disabilities Education Act.



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## **Authorize the Commissioner to take Administrative Actions to Accelerate Claims of State Aid to School Districts**

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### ***THE ISSUE:***

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. Currently, the size of this queue is so large that, barring any additional annual funds provided for this purpose, school districts will wait approximately seventeen years before any new claims are paid by the state.

### ***THE SOLUTION:***

The proposed legislation 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.



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## **Regional Secondary Schools Advisory Council**

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### ***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 has proposed legislation to this effect for several years, it has not gotten received 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 the legislation.

### ***THE SOLUTION:***

Legislation proposed by the Department 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 by December 1, 2017 in order to seek enactment of the proposed legislation during the 2018 session.



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## **Modernize Intervention Authorities to Support Struggling Schools**

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### ***THE ISSUE:***

School boards and superintendents play a crucial role in our public schools. They represent our society's firm belief in the importance of local school governance. The vast majority of school boards and superintendents are effective leaders that support staff, enhance instruction, and promote student academic achievement. However, some school districts for various reasons have fallen into patterns of mismanagement, fiscal stress, or community distress. These few districts are characterized by years, or even decades, of fiscal instability, governance challenges, or both.

Often, the governance and fiscal challenges faced by these districts result in negative outcomes in the classroom. Governance of mismanaged school districts is often beset with difficult and even intractable, long-standing problems. Frequently, such school districts lack sufficient mechanisms to hold boards of education accountable for their district's academic and/or fiscal underperformance.

While certain intervention authorities exist in education law to allow the Department to intervene in struggling school districts, these authorities are disparate, misaligned, uncoordinated, and/or ineffective. Furthermore, these interventions have become outdated or obsolete.

### ***THE SOLUTION:***

With the forthcoming implementation of the federal Every Student Succeeds Act, which will require the creation of a new accountability system, this is an appropriate time for the state to reexamine existing authorities, including:

- Evaluating current intervention authorities;
- Determining which of the existing intervention authorities are obsolete and outdated and can be eliminated from education law;
- Examining existing authorities which could have an impact and determined how such authorities can be strengthened or modernized; and
- Identifying areas where new intervention authorities may be necessary in alignment with the federal Every Student Succeeds Act.



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## Education Equity for DREAMers Act

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### ***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.

For more information contact the  
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