



TO: The P-12 Education Committee

FROM: Angelique Johnson-Dingle *Angelique Johnson-Dingle*
Jason Harmon *Jason Harmon*

SUBJECT: Proposed Amendment of Section 119.1 of the Regulations of the Commissioner of Education Relating to the Calculation of Aid Attributable to Students with Disabilities Served in Charter Schools

DATE: November 2, 2023

AUTHORIZATION(S): *Don McGreevey* *Betty*

SUMMARY

Issue for Discussion

Should the Board of Regents adopt the proposed amendments of section 119.1 of the Regulations of the Commissioner of Education relating to the calculation of aid attributable to students with disabilities served in charter schools?

Reason for Consideration

Review of policy.

Proposed Handling

The proposed amendment is presented to the P-12 Education Committee for discussion at the November 2023 Regents meeting. A copy of the proposed amendment is attached (Attachment A).

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on November 29, 2023, for a 60-day public comment period. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Aid Attributable

Charter schools in New York State do not receive direct state funding. Rather, school districts receive school aid for students enrolled in charter schools and pay tuition for students who reside within the district. State law also provides that districts must pay charter schools any state and federal aid that can be attributed to students with disabilities served in the charter school.

The current methodology to determine aid attributable to students with disabilities served in charter schools can include up to three types of state aid: (1) supplemental public excess cost aid provided by §3602(5-a) of the Education Law, (2) public high cost excess cost aid in §3602(5) of the Education Law, and (3) the public excess cost aid formula that was consolidated into foundation aid in the 2007-2008 enacted budget (updated for inflation). Public excess cost aid funds consolidated into foundation aid were preserved separately as a “setaside” within foundation aid pursuant to §3602(4)(c) of the Education Law.

Foundation aid includes a different statutory approach to funding students with disabilities than the public excess cost aid formula. This approach pursuant to §3602(1)(i)(4)(i), is calculated by multiplying 1.41 by the district’s selected foundation aid. This funding mechanism was not fully funded until the full phase-in of foundation aid beginning in the 2023-2024 school year. Prior to the full phase-in of foundation aid, this approach did not accurately identify the amount of aid attributable to a student with disabilities.

Now that foundation aid has been fully implemented, the calculation of aid attributable to students with disabilities should be updated to reflect the current approach under foundation aid, rather than the public excess cost aid formula. This proposed regulatory update to section 119.1 of the Commissioner's regulation would change the methodology beginning in the 2024-2025 school year.

Other Updates

The Department also proposes several corrections and updates to section 119.1 of the Commissioner’s regulations. First, the tuition calculation in section 119.1(b)(7) of the Commissioner’s regulations reflects the charter tuition calculation contained in §2856 of the Education Law prior to 2011. Since then, Education Law §2856 has been amended numerous times. The proposed amendment links the description of the tuition calculation to the statutory provision.

Second, the proposed amendment clarifies that data utilized for the calculation is based on the electronic data file produced as of May 15 under Education Law §305(21)(b) and as required by Education Law §2856. This longstanding practice of the Department is consistent with the statute; enshrining it in regulation will promote clarity and certainty. The same data set will be utilized to calculate aid attributable to ensure consistent, predictable, and stable funding.

Third, the Department proposes to expand the period during which charter schools must notify the Commissioner of the failure of a school district to fulfill its financial obligation under the Education Law and establish a firm deadline to submit all documentation required by the Commissioner to complete a state aid intercept. The current deadline for notification is May 31 of the school year in which payment was due. This date is prior to the close of the school year and difficult for charter schools to meet given, among other things, that final tuition payments and year-end reconciliations have not been made. The proposed change would expand the deadline for notification to the December 31st immediately following the school year in which the financial obligation was incurred and allow up to the June 30th one year after the close of the school year in which the financial obligation was incurred of to submit such required documentation to the Department. This is consistent with the limit for school district state aid claims under Education Law §3604(5)(a).

Finally, the proposed amendment includes various other technical changes, such as an updated reference to the Individuals with Disabilities Education Act, correcting an inaccurate reference to the Education Law that does not exist, updating various references, and referencing statutory authority for charter schools and school districts to agree to a different level of aid attributable.

Related Regents Items

Not applicable.

Recommendation

Not applicable.

Timetable for Implementation

It is anticipated that the proposed rule will be presented for permanent adoption at the March 2024 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the March 2024 meeting, the proposed amendment will become effective on July 1, 2024.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 2853 and 2856 of the Education Law.

1. Paragraphs 5, 7, 8, and 9 of subdivision (b) of section 119.1 of the Regulations of the Commissioner of Education are amended to read as follows:

(5) *Approved operating expense* shall mean the amount calculated pursuant to section [3602(11)] 3602(1) of the Education Law as established by the commissioner based on the most recent electronic data file prepared by the commissioner on May 15th of each school year available.

(7) [*Adjusted expense per pupil* shall be the district's expense per pupil increased by the percent change in the State total approved operating expense calculated pursuant to section 3602(11) of the Education Law from two years prior to the base year to the base year] *Charter basic tuition per pupil* shall be equal to the amount calculated pursuant to section 2856 of Education Law, as established by the commissioner based on the electronic data file prepared by the commissioner on May 15th of the base year pursuant to section 305(21)(b) of the Education Law.

(8) *State aid attributable to a student with a disability attending a charter school* shall mean:

(i) Through the 2023-2024 school year, the sum of excess cost aid payable to a public school district pursuant to section 3602(19)(4) of the Education Law based on the resident weighted enrollment in the charter school of pupils with disabilities receiving special services or programs provided directly or indirectly by the charter school in the current school year and any apportionment payable to such public school district pursuant to paragraph (5) of such subdivision (19) of the Education Law that is based on the cost of special services or programs provided directly or indirectly by the charter

school to such pupil in the current school year. Excess cost aid for the purposes of this section shall equal the product of excess cost aid per pupil calculated pursuant to section 3602(19)(3) of the Education Law, the proportion of the weighting attributable to the student's level of service provided directly or indirectly by the charter school pursuant to section 3602(19)(b)(1)-(4) of the Education Law, and the student's enrollment in such charter school in the current school year [.] ; and

(ii) Beginning in the 2024-2025 school year, the sum of the following as established by the commissioner based on the most recent electronic data file prepared by the commissioner on May 15th of each school year available:

(a) Excess cost aid payable to a public school district pursuant to section 3602(5) of the Education Law that is based on the cost of special services or programs provided directly or indirectly by the charter school to such pupil in the current school year, plus

(b) Funds payable under section 3602(5-a) of education law, pro-rated by the enrollment in the charter school of pupils with disabilities receiving special services or programs provided directly or indirectly by the charter school as a proportion of public school district enrollment of students as computed pursuant to 3602(1)(n) of education law, plus

(c) The product of (1) 1.41 multiplied by (2) current year enrollment of pupils with disabilities receiving special services or programs provided directly or indirectly by the charter school and further multiplied by (3) the school district selected foundation aid calculated pursuant to subdivision 3602(4) of Education Law.

(9) Federal aid attributable to a student with a disability attending a charter school, and receiving special education services or programs provided directly or indirectly by the charter school, shall mean:

(i) for the first year of operation of the charter school, the allocation that would be attributable to the charter school pursuant to 20 [U.S.C.]U.S.C.A. 1411 and 1419 (United States Code Annotated, [1994] 2017 edition[, Supplement III, Volume 2]; [Superintendent of Documents] Office of the Law Revision Counsel of the United States House of Representatives , U.S. Government Printing Office, Washington, DC 20402-9328; 1998 - available at the Office of [Vocational and Educational Services for Individuals with Disabilities] Counsel, Education Building, Room [1624]148, [One Commerce Plaza] State Education Department, Albany, NY 12234) for a pupil who is identified as a student with a disability, as such term is defined in section 200.1 of this Title, who is included in a report to the commissioner of pupils so identified as of December 1st of the current school year, or for such other pupil count as specified by the Federal government for the current school year, provided that the enrollment of such students in the charter school during the current school year shall be used for this purpose until such report, or a report of such other pupil count, has been received by the commissioner; and

(ii) for the second year of operation of the charter school and thereafter, the allocation that would be attributable to the charter school pursuant to 20 [U.S.C.]U.S.C.A. 1411 and 1419 (United States Code Annotated, [1994]2017 edition[, Supplement III, Volume 2]; [Superintendent of Documents] Office of the Law Revision Counsel of the United States House of Representatives, U.S. Government Printing Office, Washington, DC 20402-9328; 1998 - available at the Office of [Vocational and Educational Services for Individuals with Disabilities]Counsel, Education Building, Room [1624]148, [One Commerce Plaza]State Education Building, Albany, NY 12234) for a pupil who is identified as a student with a disability, as such term is defined in section 200.1 of this Title, who is included in a report to the commissioner of pupils so identified

as of December 1st of the base year, or for such other pupil count as specified by the Federal government.

2. Paragraph 3 of subdivision (c) of section 119.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(3) In the event of the failure of a school district to fulfill the financial obligation required by section 2856 of the Education Law equal to the amounts calculated pursuant to this section based on the final report of actual enrollment required pursuant to subdivision (c) of this section, the charter school shall notify the commissioner no later than [May] the December 31st immediately following the school year in which the [payments were due financial obligation was incurred and shall submit all documentation required by the Commissioner to complete a state aid intercept to the department no later than the June 30th one year after the close of the school year in which the financial obligation was incurred.

3. Paragraph 3 of subdivision (d) of section 119.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(3) The school district financial obligation per resident student enrolled in a charter school shall equal the sum of:

(i) the product of the school [adjusted expense per pupil] district's charter school basic tuition and the current year enrollment of the [pupil] pupils in the charter school as defined in paragraph (b)(3) of this section; and

(ii) the amounts of State and Federal aid, if any, that may be attributable to such pupil as defined in paragraphs (b)(8) and (9) of this section, or the amount established pursuant to an agreement between the charter school and the [charter entity as set forth in the charter] school district as authorized under section 2856(1)(b) of the Education Law and section 102 of Part H of Chapter 83 of the Laws of 2002.

4. Paragraphs 1 and 2 of subdivision (e) of section 119.1 of the Regulations of the Commissioner of Education are amended to read as follows:

(e) Department obligations.

(1) On or before the first day of June of each year, or as soon as practicable upon the receipt of Federal notice of the estimated State appropriation for the next school year, the commissioner shall notify all school districts and all charter schools of the [adjusted expense per pupil of each public school district] charter school basic tuition and the estimated per pupil allocation under part B of the Federal Individuals with Disabilities Education Act to be used in the calculation of payments due to charter schools in next school year, provided that, for payments due to charter schools in the 1999-2000 school year, such notification shall be made on or before August 15, 1999. Notice of final Federal per pupil allocation will be issued as soon as practicable upon the State's receipt of the notice of final allocation from the Federal government.

(2) In the event of the failure of a school district to fulfill the financial obligation required by section [2956] 2856 of the Education Law equal to the amounts calculated pursuant to this section, upon notification by the charter school, the commissioner shall certify the amounts of the unpaid obligations to the comptroller to be deducted from State aid due the school district and paid to the applicable charter schools.