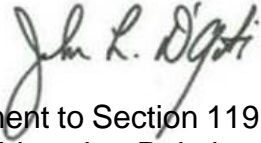





**TO:** The Honorable the Members of the Board of Regents

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

**SUBJECT:** Proposed Amendment to Section 119.3 of the Regulations of the Commissioner of Education Relating to Financial Transparency and Data Reporting Requirements for Charter Schools

**DATE:** July 2, 2020

**AUTHORIZATION(S):**  Sharon L. Tabor

#### SUMMARY

##### Issue for Decision

Should the Board of Regents permanently adopt the proposed amendments to Section 119.3 of the Regulations of the Commissioner of Education relating to financial transparency and data reporting requirements for charter schools?

##### Reason(s) for Consideration

Review of policy.

##### Proposed Handling

The proposed amendment will be presented to the Full Board for permanent adoption at its July 2020 meeting. A copy of the proposed rule is included as Attachment A, and an Assessment of Public Comment is included as Attachment B.

##### Procedural History

The proposed amendment was presented to the P-12 Education Committee for discussion at its January 2020 meeting. A Notice of Proposed Rule Making was published in the State Register on January 29, 2020. Following the 60-day public comment period required under the State Administrative Procedure Act, the Department received one comment on the proposed amendment. The Department has determined that no changes to the proposed rule are necessary at this time. Supporting materials are available upon request to the Secretary to 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 Education Department 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 a wide variety of 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 the final adopted regulation and the Department’s guidance.

The fiscal transparency report for charter schools will closely mirror the report for school districts, with changes made to ensure that the charter context, and other fiscal data reporting requirements as set forth in Article 56 of the Education Law, are considered. Similar to the report for school districts, the report for charter schools will be divided into multiple sections that will provide the required expenditure data as well as important contextual information that will inform the reader of the charter school’s financial and student needs. Additional details on the report will be provided in the Regents Item regarding regulatory changes to ESSA Fiscal Transparency reporting for school districts, also presented at the January 2020 Board of Regents meeting.

Charter schools will submit school-level expenditure data to the Department, pursuant to Commissioner’s Regulation Section 170.14, through the ESSA Fiscal Transparency Portal commencing on November 1, 2020 (using 2019-2020 school year data) and each November 1 thereafter (using the preceding school year’s data). Similar to the approach being taken with school districts, the charter school expenditure data will be

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<sup>1</sup> Charter schools currently report actual expenditure data pursuant to section 100.19 of the Commissioner’s regulations, which the USDOE confirmed through a letter to NYSED 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.

combined with other contextual information already collected by the Department into a report that will be available in 2021 and thereafter.

Education Law Section 2857(2) requires that a public charter school submit to the charter entity and to the Board of Regents an annual report by the first day of August of each year for the preceding school year. The annual report must be made publicly available by the school, must be posted on the school's website, must include certain components, and must be in the form prescribed by the Commissioner. In 2000, the Board of Regents promulgated data reporting regulations to address the requirements set forth in Section 2857(2). In 2003, the Board of Regents voted to amend the regulations to provide additional clarification, and to update the reporting requirements to conform with the provisions of the No Child Left Behind (NCLB) Act of 2001 relating to school/district accountability and data and reporting requirements. No additional updates have been made since the 2003 amendments.

Due to changes in the reporting requirements and templates issued by NYSED without a corresponding amendment to the regulations, including new federal data reporting requirements prescribed by ESSA, charter schools have expressed confusion regarding the requirements and expectations of the Department. Some schools also fail to report certain data that is not specified in the current regulations. These reporting inconsistencies may have accountability, fiscal and other implications for the schools involved.

### **Related Regent's Items**

#### **ESSA Fiscal Transparency**

April 2019:

[ESSA Financial Transparency Requirement](https://www.regents.nysed.gov/common/regents/files/419p12d1.pdf)

(<https://www.regents.nysed.gov/common/regents/files/419p12d1.pdf>)

July 2019:

[ESSA Financial Transparency Requirement](http://www.regents.nysed.gov/common/regents/files/719p12d2.pdf)

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

January 2020:

[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)

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

[Proposed Amendment of Section 119.3 of the Regulations of the Commissioner of Education Relating to Financial Transparency and Data Reporting Requirements for Charter Schools](https://www.regents.nysed.gov/common/regents/files/120p12d2.pdf)

(<https://www.regents.nysed.gov/common/regents/files/120p12d2.pdf>)

June 2020: [ESSA Financial Transparency Requirement for the 2018-19 School Year](http://www.regents.nysed.gov/common/regents/files/620brd1.pdf)

(<http://www.regents.nysed.gov/common/regents/files/620brd1.pdf>)

**Recommendation**

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

VOTED: That Section 119.3 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 29, 2020.

**Timetable for Implementation**

If adopted at the July 2020 meeting, the proposed amendment will become effective on July 29, 2020.

**Attachment A**

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 206, 207, 305 and 2857 of the Education Law:

1. Section 119.3 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 119.3. Charter school reporting requirements

No later than the first day of August of each year, each charter school shall submit to the Board of Regents and to the charter entity an annual report for the preceding school year, which shall include a charter school report card comprising the data set forth in subdivisions (a)-[(c)] (d) of this section.

(a) Basic school information, forms and records. Each charter school shall report to the commissioner, in a time and format prescribed by the commissioner, basic school information data, including but not limited to the data required of other public schools, required by Federal law or regulation, and any other data elements prescribed by the commissioner.

(b) [Basic educational] Student and staff data. Each charter school shall report to the commissioner the following data at a time and in a format prescribed by the commissioner:

(1) student enrollment by grade, gender, and race/ethnicity, and other subgroup populations as defined by the Department;

(2) ...

(3) professional qualifications of each teacher [and] classes taught by each teacher, and any other staff data elements required for state and federal reporting

purposes, data required by section 80-1.9 of this Chapter, and other such data as prescribed by the commissioner;

(4) [the number of] data concerning students with limited English proficiency;

(5) ...

(6) data on technological and media resources; [and]

(7) student attendance and suspension data; and

(8) any additional information prescribed by the commissioner comparable to the data required of the public schools or required by Federal or State law or regulation.

[(b)] (c) Report of academic performance. Each charter school shall report to the commissioner the following data, in a format prescribed by the commissioner:

(1)...

(i) ...

(ii) [Identification of race/ethnicity. Each student record submitted for the 2002-03 and 2003-04 school years must indicate to which of the following racial/ethnic groups the student belongs: American Indian or Alaskan Native, Black (not Hispanic origin), Asian or Pacific Islander, Hispanic or White (not Hispanic origin). Beginning with the 2004-05 school year, each student record must contain information in the format required by the commissioner and indicating whether the student is Hispanic and indicating to which of the following racial groups the student belongs: White, Black or African American, Asian, American Indian or Alaskan Native, Native Hawaiian or other Pacific Islander.

(iii)] Before submitting each file, the principal of the charter school shall certify that the [file] data submitted is complete and accurate and that the principal has had an

opportunity to review the summary report for the charter school, based on the file and generated using Department-approved software.

[(iv)] (iii) The charter school files on record in the Department on the dates specified by the commissioner shall be used for all public reporting, including that pursuant to this section and for determining school/district accountability pursuant to section 100.2(p) of this Title.

[(v)](iv) The student files shall contain any additional information the commissioner may deem necessary and must be reported in a manner set forth by the department.

(2) ...

(3) ...

(4) student attendance and suspension data;

(5) ...

(6) any additional information prescribed by the commissioner comparable to data required of the public schools or required by Federal or State law or regulation.

[(c)] (d) Report of fiscal performance. [Each] For the 2018-2019 school year each charter school shall report the following data, in a format prescribed by the commissioner:

(1) Revenues.

(i) Revenues from State sources, which shall mean any State-funded grants or other apportionments paid directly to the charter school by the State of New York.

(ii) Revenues from Federal sources, which shall mean any federally funded grants or other apportionments paid directly to the charter school by the Federal government or by the State of New York.

(iii) Basic operating revenues received from public school districts ,which shall mean payments received by the charter school from public school districts based on the product of the adjusted expense per pupil and the current year resident enrollment in the charter school for all public school districts with resident pupils attending the charter school as such product is defined in section 119.1(d)(3)(i) of this Part, or based on any such reduced amounts payable to the charter school by a public school district pursuant to an agreement between the charter school and the charter entity as set forth in the charter.

(iv) Revenues received from public school districts as State aid attributable to pupils with disabilities, which shall mean any payments received from public school districts representing State aid attributable to a student with a disability attending a charter school as defined in section 119.1(b)(8) of this Part.

(v) Revenues received from public school districts as Federal aid attributable to pupils with disabilities, which shall mean any payments received from public school districts representing Federal aid attributable to a student with a disability attending a charter school as defined in section 119.1(b)(8) of this Part.

(vi) Other revenues from other public school districts, which shall mean any payments received from public school districts other than those revenues defined in subparagraph (iii), (iv) or

(v) of this paragraph.

(vii) All other revenues, which shall mean any revenues received by the charter school other than those revenues defined in subparagraph (i), (ii), (iii), (iv), (v) or (vi) of this paragraph.

(2) Expenditures.



(i) Salaries, which shall mean the sum of the compensation paid to employees of the charter school for services performed in relation to those activities defined in paragraph (3) of this subdivision exclusive of the amounts paid for employee benefits. Salaries shall be reported by specific activity.

(ii) Employee benefits, which shall mean the charter school employer's share of any retirement, social security, workers' compensation, life insurance, unemployment insurance, disability insurance, hospital insurance, medical insurance, dental insurance, union welfare benefits or other benefits provided to the employees of the charter school as a condition of employment.

(iii) Other expense for specific activities, which shall mean any expenditures of the charter school related to those activities defined in paragraph (3) of this subdivision exclusive of salaries, employee benefits, debt service, operation and maintenance, capital expenditures, or expenditures for school lunch. Such other expense shall be reported by specific activity.

(iv) Debt service, which shall mean any expenditures for principal and interest on long term and short term obligations issued by the charter school.

(v) School lunch, which shall mean any expenditures associated with providing breakfast, milk or lunch to pupils attending the charter school.

(vi) Capital expense, which shall mean any capital outlay expenditures related to construction projects associated with the charter school.

(3) Salaries and other expense for specific activities shall be reported by the following activity classifications:

(i) General administration, which shall mean the administration and management of the charter school including, but not restricted to activities of the offices of the chief school officer, the treasurer, the finance or business officer, the purchasing unit, the employee personnel officer, the records management officer, or a public information and services officer. General administration also includes those administrative and management services provided by other organizations or corporations on behalf of the charter school for which the charter school pays a fee or other compensation. Direct administration of the instructional programs and services of the charter school and direct supervision of the instructional staff should not be included as general administration.

(ii) Instructional supervision, which shall mean the direct administration and management of the instructional programs and services of the charter school and the direct supervision of instructional staff, including, but not restricted to such functions as the office of a building principal, curriculum development, curriculum supervision, instructional research, planning and evaluation, and in-service training of the instructional staff of the charter school.

(iii) All other instruction, which shall mean those activities and functions related to the instructional programs and services of the charter school that are not related to instructional supervision, including, but not restricted to teaching of regular pupils, school library and audiovisual services, educational television, and computer assisted instruction.

(iv) Pupil services ,which shall mean all pupil personnel services provided by the charter school, including, but not restricted to the functions of an attendance office, a guidance office, pupil health services, pupil psychological services, social work services, co-curricular activities, and interscholastic athletics.

(v) Services for pupils with disabilities, which shall mean those special education programs and services provided by the charter school to pupils with disabilities as specified in an individualized education program recommended by a committee on special education and approved by the board of education.

(vi) Pupil transportation services, which shall mean transportation services provided by the charter school to pupils attending the charter school, including, but not restricted to transportation to and from the charter school and the child's residence, transportation on field trips, and transportation to extracurricular activities or interscholastic events.

(vii) Community services, which shall mean community recreation programs, youth programs and other civic services provided by the charter school.

(viii) Operation and maintenance, which shall mean the repair, operating and maintenance services and programs required to maintain safe, secure and healthy facilities and learning environments for the charter school staff and students.

(4) Measures of per pupil expenditures.

(i) Enrollment, which shall mean enrollment for the preceding school year as defined in section 119.1(b)(3) of this Part.

(ii) Total expenditures, which shall mean the sum of all expenditures reported for the school year for general administration, instructional supervision, all other instruction, pupil services, services for pupils with disabilities, pupil transportation services, community services, operation and maintenance, employee benefits, debt service, school lunch, and capital expense.

(iii) Expenditures per pupil, which shall mean the quotient of total expenditures divided by enrollment, rounded to the next highest whole dollar.

(e) Report of fiscal performance. For the 2019-2020 school year and thereafter, each charter school shall submit school-level expenditure data to the Department pursuant to section 170.14 of this Chapter commencing on November 1, 2020 (using 2019-2020 school year data) and each November 1 thereafter (using the preceding school year's data) in accordance with the provisions of section 170.14 of this Chapter, or as otherwise prescribed by the commissioner.

[(d)] (f) To satisfy the local report card requirements under section 1111(h)(2) of the No Child Left Behind Act, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. section 6311(h)(2), each charter school receiving Federal funding under title I must meet the requirements set forth in section 100.2(m)(4) of this Title.

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Revised Rule Making in the State Register on January 29, 2020, the State Education Department (SED) received the following comments.

1. COMMENT:

The deadline for the new reporting guidelines does not appropriately conform to the deadline for the annual report.

DEPARTMENT RESPONSE:

The proposed regulation does not change current reporting deadlines. The annual report will continue to have an August 1 deadline, while maintaining the November fiscal reporting requirements currently in place.

2. COMMENT:

The timetable for implementation is not realistic, and implementation should be delayed until feedback is provided by a working group.

DEPARTMENT RESPONSE:

The Every Student Succeeds Act (ESSA) requires that every 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 2019-20 school year.

The Department initially began informing schools of the proposed regulatory changes in 2019, more than one year before implementation. Town halls and meetings were held to garner feedback from schools regarding the proposal. A charter school ESSA Fiscal

Transparency working group was also formed early in 2020. Members of this group, representative of the charter sector, including schools from across the State, advocacy organizations, and authorizers, meet on a regular basis to develop guidance documents for charter schools and provide input to NYSED regarding ESSA Fiscal Transparency implementation.

3. COMMENT:

Charter-specific reporting templates and guidance are needed prior to the reporting deadline.

DEPARTMENT RESPONSE:

Charter-specific guidance and template will be issued prior to the reporting deadline. The reporting template used will ensure that the data submitted by charter schools is easily comparable to the data submitted by district schools. The charter school ESSA Fiscal Transparency working group has been meeting on a regular basis to develop this guidance.

4. COMMENT:

The proposed regulation improperly exceeds the statutory reporting requirements by giving the Commissioner wide latitude regarding the form and scope of the report.

DEPARTMENT RESPONSE:

Education Law §2857 gives the Commissioner wide latitude to determine the form and scope of the annual report, to wit, “The annual report shall be in such form as shall be prescribed by the commissioner and shall include *at least* the following components...”

*Emphasis added.*

5. COMMENT:

Terms contained in the proposed regulation lack specificity and require clarification, and the reporting requirements are duplicative.

DEPARTMENT RESPONSE:

A Charter-specific template and guidance will be issued prior to the reporting deadline. The reporting template will make data submitted by charter schools easily comparable to the data submitted by district schools. The Charter school financial transparency reporting may lead to very limited cases of duplicative reporting with other charter school reporting requirements.