





**TO:** P-12 Education Committee

**FROM:** Jason Harmon 

**SUBJECT:** Proposed Amendment of Section 100.13 of the Regulations of the Commissioner of Education Relating to Contracts for Excellence and Class Size Reduction in the City School District of the City of New York

**DATE:** September 8, 2023

**AUTHORIZATION(S):** 

### **SUMMARY**

#### **Issue for Decision**

Should the Board of Regents adopt the proposed amendment of Section 100.13 of the Regulations of the Commissioner of Education relating to Contracts for Excellence and class size reduction in the City School District of the City of New York?

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

Required by State Statute (Chapter 556 of the Laws of 2022, as amended by Chapter 86 of the Laws of 2023).

#### **Proposed Handling**

The proposed amendment is submitted to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at its September 2023 meeting. A copy of the proposed rule is included (Attachment A) and a statement of facts and circumstances justifying emergency action is included (Attachment B).

#### **Procedural History**

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on September 27, 2023, for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

## **Background Information**

On September 8, 2022, Chapter 556 of the Laws of 2022<sup>1</sup> (Chapter 556) was signed into law, which immediately amended Education Law §211-D to require that the City School District of the City of New York's Contract for Excellence include a plan to reduce actual class sizes. Chapter 556 sets forth requirements relating to (1) class size targets that must be included in the plan, (2) development and compliance with the plan, and (3) reporting on the status of implementation of the plan.

Consistent with Chapter 556, this proposed amendment of section 100.13 of the Commissioner's regulations implements Chapter 556 by requiring that the class size reduction plan be developed and implemented by the City School District to realize actual class size reductions over a period of five (5) years (from September 2023 through September 2028) at a rate of an additional 20% per year. The plan must be developed and agreed upon by the City School District and the collective bargaining units representing the teachers and principals of such district and must include the methods used to achieve such targets; describe how the district will maintain compliance with the limits; prioritize schools serving populations with higher poverty levels; and include any agreed-upon limited exemptions to the targets. The proposed amendment establishes the class size targets of no more than 20 for kindergarten through grade three, 23 for grades four through eight, 25 for grades nine through twelve, and 40 for physical education and performing arts classes for the City School District of the City of New York.

Additionally, consistent with Chapter 556, the proposed amendment requires that the City School District must report to the Commissioner by November 15, 2023, and annually thereafter, on its progress toward the class size goals in its class size reduction plan. Further, by November 15, 2025, the City School District must submit a statement regarding the financial impact of the class size reduction plan and may recommend a pause of such plan, however, it may not result in a rollback or increase in class sizes.

## **Related Regents Items**

Not applicable.

## **Recommendation**

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

VOTED: That section 100.13 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 12, 2023, as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform the Commissioner's regulations to Chapter 556 of the Laws of 2022, as amended by Chapter 86 of the Laws of 2023.

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<sup>1</sup> Chapter 556 was amended by Chapter 86 of the Laws of 2023 which moved out dates relating to the: class size reduction plan; (2) annual reports on the status of implementation of the plan; and (3) submission of the financial impact statement.

### **Timetable for Implementation**

If adopted as an emergency rule at the September 2023 Regents meeting, the emergency rule will become effective September 12, 2023. It is anticipated that the proposed amendment will be presented for permanent adoption at the January 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. Because the emergency action will expire before the January Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the November 2023 meeting. If adopted at the January meeting, the proposed amendment will become effective as a permanent rule on January 24, 2024.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 215, 305, 309, and 211-d of the Education Law and Chapter 556 of the Laws of 2022 and Chapter 86 of the Laws of 2023.

1. Subparagraph (vi) of paragraph (1) of subdivision (c) of section 100.13 of the Regulations of the Commissioner of Education is amended to read as follows:

(vi) (a) in the city school district of the city of New York, include a plan, which shall be developed with the collective bargaining units representing teachers and principals and signed off on by the chancellor and the presidents of each bargaining unit and that meets the requirements of clause (c)(2)(i)(a) of this section, to reduce [average] actual class sizes [within five years for the following grade ranges] beginning September two thousand twenty-three and to be achieved by September two thousand twenty-eight as follows:

[(a) prekindergarten] (1) For all classes, except for physical education and performing groups:

(i) kindergarten through grade three shall have no more than twenty students per class;

[(b)] (ii) grades four through eight shall have no more than twenty-three students per class; and

[(c)] (iii) grades nine through twelve shall have no more than twenty-five students per class.

(2) Physical education and performing groups shall have no more than forty students per class at all levels.

(b) Notwithstanding clause (a) of this subparagraph, for elective and specialty classes, the collective bargaining unit representing teachers may negotiate class sizes higher than the targets prescribed in such clause if such increase is approved by a majority of the staff in the school.

(c) Each year of the plan, an additional 20 percent of the classrooms in the city school district, excluding special education classes and exempted classes for the years they are exempt, shall comply with the class size targets such that the city school district is in full compliance by the two thousand twenty-eight and all classes should maintain the target class size.

(d) The class size reduction plan shall:

(1) prioritize schools serving populations with higher poverty levels;

(2) describe how the city school district will maintain compliance with the class size limits prescribed in this subparagraph;

(3) include any exemptions to the class size limits, as approved by the chancellor and the presidents of the collective bargaining units representing teachers and principals. Should the chancellor and the presidents of such collective bargaining units be unable to reach an agreement on the exemptions after 30 days, the issue shall be determined by an arbitrator. Such exemptions shall be limited to:

(i) space, provided that any exemption based on available space shall include a reference to the capital budget to demonstrate that the budget is aligned with resolving the exemption status;

(ii) over-enrolled students;

(iii) license area shortages; and

(iv) severe economic distress.

[Such plan shall be] (4) include methods used to achieve class size targets aligned with the capital plan of the city school district of the city of New York [and include continuous class size reduction for low-performing and overcrowded schools beginning in the 2007-2008 school year and thereafter and also include the methods to be used to achieve proposed class sizes], such as the creation or construction of more classrooms and school buildings, the placement of more than one teacher in a classroom or methods to otherwise reduce the student to teacher ratio, but only as a temporary measure until more classrooms are made available in conformance with the plan. [Beginning in the 2008-2009 school year and thereafter, such plan shall provide for reductions in class size that, by the end of the 2011-2012 school year, will not exceed the prekindergarten through grade 12 class size targets as prescribed by the commissioner after his/her consideration of the recommendation of an expert panel appointed by the commissioner to conduct a review of existing class size research.]

(e) Notwithstanding, any rule or regulation of this Title to the contrary, the sole and exclusive remedy for a violation of the requirements of Education Law, section 211-d(2)(b)(ii) shall be pursuant to a petition to the commissioner under Education Law, section 310(7), and the decision of the commissioner on such petition shall be final and unreviewable.

2. Subparagraph (i) of paragraph (2) of subdivision (c) of section 100.13 of the Regulations of the Commissioner of Education is amended to read as follows:

(i) class size reduction, pursuant to the following:

(a) allowable programs and activities related to class size reduction in the city school district of the city of New York [shall include]:

(1) shall include the creation or construction of more classrooms and/or school buildings to facilitate student attainment of State learning standards pursuant to the following requirements:

(i) priority shall be given to [prekindergarten] schools serving students in kindergarten through grade 12 [students in] with higher poverty levels and, amongst such schools, overcrowded schools particularly requiring academic progress, schools in need of improvement, schools in corrective action, and schools in restructuring status;

(ii) for the [2007-2008] 2023-2024 school year and continuing for each school year thereafter up to and including the [2011-2012] 2028-2029 school year, the city school district of the city of New York shall provide baseline data for the respective immediately preceding school year stating for each grade level targeted:

(A) the number of classes;

(B) the [average] actual class size; and

(C) the number of classroom teachers;

(iii) [for the 2007-2008 school year, the city school district of the city of New York shall establish class size reduction goals for each grade level targeted and upon conclusion of such school year, shall report, in a format and pursuant to a timeline prescribed by the commissioner, measurable progress toward meeting such goals;

(iv) beginning in the [2008-2009] 2023-2024 school year and continuing through the [2011-2012] 2028-2029 school year, the city school district of the city of New York shall[:

(A) establish annual class size reduction goals for each grade level targeted that will reduce class size toward the prekindergarten through grade 12 targets as prescribed by the commissioner after his/her consideration of the recommendation of an

expert panel appointed by the commissioner to conduct a review of existing class size research;

(B) make measurable progress in each such school year toward achieving such targets; and

(C) not exceed such targets by the end of the 2011-2012 school year] develop and implement the class size reduction plan as prescribed in subparagraph (b)(1)(vi) of this section; and

[(v)] (iv) the classrooms created shall provide adequate and appropriate physical space to students and staff; [or] and

(2) may include the assignment of more than one teacher to a classroom to facilitate student attainment of State learning standards, but only as a temporary measure until more classrooms are made available in conformance with the class size reduction plan prescribed in subparagraph (b)(1)(vi) of this section[, pursuant to the following requirements:

(i) priority]. Priority shall be given to [prekindergarten] schools serving kindergarten through grade 12 [students in] with higher poverty levels and, amongst such schools, overcrowded schools particularly those requiring academic progress, schools in need of improvement, schools in corrective action, and schools in restructuring status[;

(ii) for the 2007-2008 school year, the city school district of the City of New York shall report, in a format and pursuant to a timeline prescribed by the commissioner, the extent to which the assignment of additional teacher(s) to a classroom reduced the classroom teacher-student ratio for each grade level targeted and, where class size



reduction goals are established under item (1)(iii) of this clause, shall also report measurable progress toward meeting such goals; and

(iii) beginning in the 2008-2009 school year and thereafter, in each classroom to which an additional teacher is assigned, the classroom teacher-student ratio shall not exceed the prekindergarten through grade 12 targets prescribed by the commissioner after his/her consideration of the recommendation of an expert panel appointed by the commissioner to conduct a review of existing class size research]; [or] and

(3) may include other methods, as approved by the commissioner, to otherwise reduce the student-to-teacher ratio, but only as a temporary measure until more classrooms are made available in conformance with the class size reduction plan prescribed in subparagraph (b)(1)(vi) of this section.

(b) ...

3. Subdivision (f) of section 100.13 of the Regulations of the Commissioner of Education is amended to read as follows:

(f) Reporting and financial impact statements.

(1) Each school district shall publicly report, in a format and timeline prescribed by the commissioner, its school-based expenditure of total foundation aid in accordance with the following: a school district shall report in total and for each of the allowable programs and activities included in its contract for excellence and which the district proposes to fund with its annual contract amount, for each school and each district-wide program:

[(1)](i) expenditures in the base year;

[(2)](ii) budgeted expenditures for the current year; and

[(3)](iii) actual expenditures for the current year.

(2) The city school district of the City of New York shall prepare an annual report on the status of the implementation of its plan to reduce actual class sizes pursuant to subparagraph (b)(1)(vi) of this section.

(i) Such report shall be submitted to the commissioner on or before November 15, 2023, and each November 15 for five subsequent years and shall be made available to the public by such date on the city school district's website, identifying all schools that received funds targeted at class size reduction efforts and providing the following information regarding such schools:

(a) the amount of contract for excellence funds received by each school and the school year in which it received such funds;

(b) a detailed description of how contract for excellence funds contributed to achieving class size reduction in each school that received such funding including specific information on the number of classes in each school that existed prior to receiving contract for excellence funds and the number of new classes that were created in each school for each year such funding was received, the number of classroom teachers that existed in each school prior to receiving contract for excellence funds and the number of new classroom teachers in each school for each year such funding was received, the student to teacher ratio in each school prior to receiving contract for excellence funds and the student to teacher ratio in each school for each year such funding was received;

(c) the actual student enrollment for the current school year and the projected student enrollment for the upcoming school year for each school by grade level;

(d) the actual class sizes for the current school year, and the projected class sizes for the upcoming school year for each school by grade level;

(e) the annual capital plan for school construction and leasing to show how many classrooms will be added in each year and in which schools and districts to achieve the class size targets;

(f) how the school capacity and utilization formula is aligned with the class size targets in the city school district's class size reduction plan; and

(g) the schools that have made insufficient progress toward achieving the class size reduction targets set forth in the approved class size reduction plan and a detailed description of the actions that will be taken to reduce class sizes in such schools.

(ii) Such report shall be certified by the state or city comptroller that the city school district's capital and education funding plans will provide sufficient space and staffing for the reduction in class size set forth in this paragraph and, if not, what measures and/or funding should be added to the plan to achieve such targets.

(iii) If the department determines that the report does not demonstrate sufficient decreases in class size, the department shall issue a letter to that effect and make it available on its website. The city school district shall immediately submit a plan for corrective action, which shall be developed in collaboration with the collective bargaining units representing the teachers and the principals and signed off on by the chancellor and the president of each collective bargaining unit. The city school district's corrective action plan shall also be made available to the public on the city school district's website upon submission to the department. Upon approval by the department, the final corrective action plan shall be made available to the public.

(3) The city school district of the City of New York shall submit a financial impact statement to the commissioner on November 15, 2025. The financial impact statement

may recommend a pause of the class size reduction plan, but in no event may it result in a rollback or increase in class sizes.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH  
NECESSITATE EMERGENCY ACTION

On September 8, 2022, Chapter 556 of the Laws of 2022<sup>2</sup> (Chapter 556) was signed into law, which immediately amended Education Law §211-D to require that the City School District of the City of New York's Contract for Excellence include a plan to reduce actual class sizes. Chapter 556 sets forth requirements relating to (1) class size targets that must be included in the plan, (2) development and compliance with the plan, and (3) reporting on the status of implementation of the plan.

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Additionally, consistent with Chapter 556, the proposed amendment requires that the City School District must annually report to the Commissioner by November 15, 2023, and annually thereafter, on its progress toward the class size goals in its class size reduction plan. Further, by November 15, 2025, the City School District must submit a statement regarding the financial impact of the class size reduction plan and may recommend a pause of such plan, however, it may not result in a rollback or increase in class sizes.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the January 2024 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the January meeting, would be January 24, 2023, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the September 2023 meeting, effective September 12, 2023, for the preservation of the general welfare in order to conform the Commissioner's regulations to Chapter 556 of the Laws of 2022, as amended by Chapter 86 of the Laws of 2023.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the January 2024 Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking. However, since the emergency action will expire

before the January 2024 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the November 2023 Regents meeting.