THE STATE EDUCATION DEPARTMENT

THE UNIVERSITY OF THE STATE OF NEW YORK
ALBANY, NY 12234

EXECUTIVE DEPUTY COMMISSIONER

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2015 Regents State Legislative Priorities

Affirm Support for Previously Advanced Priorities:

- **Mandate Relief and Flexibility –** Legislation would enact a series of mandate relief measures to promote cost savings and provide relief from reporting requirements. (S.5557-A-Flanagan/A.7060-Nolan of 2014)

- **Create Regional Secondary Schools** – Legislation would enable 3 or more school districts to enter into a mutual contract to form a regional secondary school, affording students greater educational opportunities. (S.4184-A-Flanagan/A.7149-A-Nolan of 2014)

- **Intervention in Chronically Underperforming Schools –** Legislation would authorize SED to give these districts a series of tools and supports to get them back on track. (S.4183-Flanagan/A.6480-Nolan of 2014)

- **Tuition Rate Setting Methodology –** Legislation would create a statutory index for establishing the growth in annual tuition for Special Act School Districts and Approved Private Schools Serving Students with Disabilities (853 Schools) and authorize the creation of a general reserve fund.

- **TAP for Early College High School Students –** Legislation would provide for Tuition Assistance Program funding to Early College High School students located in high-need areas, and provide sustainable support for these newly created programs.

- **Education Equity for DREAMers Act –** Legislation would give undocumented immigrants the opportunity and access to higher education by making financial assistance available. (S.5682-Rules of 2013)

- **Tuition Assistance Program (TAP) for Students with Disabilities –** Legislation would resolve the conflict in the law that has resulted in creating a barrier for students with disabilities who attend college part-time to continue receiving TAP awards.

Consider and Approve New Legislative Priorities:

- **BOCES CTE Salary Cap & Special Services Aid Increase** – Modernize and incentivize creation of high quality CTE programs by updating reimbursement for BOCES aid for CTE programs and Special Services Aid.

- **Safe and Supportive Schools –** Improve support to school districts to better ensure that all students are able to attend school in a safe building with a positive learning environment.

- **Tenure and Seniority Protections for Bilingual and ESOL Teachers and Teacher Assistants** – Require that in an event of the abolition of a position, that districts consider whether the retention of a less senior teacher or teaching assistant is necessary for the school to provide bilingual/ESOL instruction.

- **Professional Licensure for DACA Recipients** – Allow eligible DACA recipients to obtain professional licensure to ensure equal access to workplace opportunities.

- **Institutional Accreditation** – Authorize an account for the collection of fees related to accreditation services to provide much needed capacity to the office of College and University Evaluation.

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Mandate Relief and Accountability

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.

THE SOLUTION:

Our proposed legislation would eliminate or reduce a significant number of statutory mandates and provide greater flexibility relating to curriculum, transportation, educational management services and special education. Among other provisions, the legislation 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.
- 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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Create Regional Secondary Schools

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 education level.

Current state law has limited options for school districts to create and sustain high-quality collaborative secondary schools. Provisions allow for central high school districts, the creation of regional high schools in Suffolk County and special legislation enacted in 2007 led to the creation 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.

THE SOLUTION:

By allowing three or more districts to contract together or with a BOCES to establish a regional secondary school, the Regents proposal will:

- Improve instructional quality and students' educational opportunities by helping districts pool educational resources to allow them to provide the educational programming necessary to ensure that students are prepared to succeed in college and careers.
- Allow districts to leverage resources to provide greater operational flexibility and cost savings.
- Require boards of education to approve a resolution proposing establishment of a regional secondary school, to be followed by a referendum by voters in each school district.
- Require SED approval of proposed regional secondary school plans to ensure that the plan provides for increased educational opportunities for students.
- Provide state aid to incentivize districts that create a regional secondary school and to provide them with resources that may be required through the first five years of a transition.
- Preserve rights of teachers during a transition to a regional high school in a manner similar to when a BOCES assumes operation of a school district program.

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Support & Intervention in Chronically Underperforming Schools

THE ISSUE:

School boards play a crucial role in our public schools. They represent our society's firm belief in the importance of local governance. The vast majority of school boards are effective bodies that support staff, enhance instruction and promote student academic achievement. However, some school districts are continually and chronically underperforming. These few districts are characterized by years, or even decades of consistently low academic performance, rampant fiscal instability, or both. Chronically underperforming districts typically have one or more schools identified as Priority Schools. Fiscally, these districts fail to exercise appropriate fiscal management by failing to take the actions necessary to keep the district's budget in balance and/or maintain appropriate and consistent fund balances.

Often such districts have graduation rates at or below 60% and/or have high drop-out rates. In the elementary grades, such districts have low numbers of students who are proficient and high numbers of students struggling to meet grade level expectations. Moreover, such districts consistently fail to move low performing students to proficiency.

Governance of chronically underperforming school districts is often beset with difficult and even intractable, long-standing problems. Frequently, such districts lack sufficient mechanisms to hold boards of education accountable for their district's academic and/or fiscal underperformance.

THE SOLUTION:

The proposed legislation will authorize the Board of Regents and the Commissioner to put school districts into three levels of Academic and/or Fiscal Restructuring Status, with tools and supports to help them get on track and remove them from oversight. Such tools and supports would include:

- The appointment of Integrated Intervention Teams (formerly Joint School Intervention Teams).
- Requiring these districts to develop a plan with specific, measurable goals and removal from oversight status if plan goals are met for three consecutive school years.
- Giving more troubled districts the assistance of a Distinguished Educator and/or a Fiscal Administrator to review and monitor the district's operations, including school academic and fiscal systems, structures, projects, operations and facilities, and recommend measures to the board.
- Appointing an independent review team for the most troubled school districts to review the board of education's actions and/or omissions and make a recommendation to the Board of Regents.
- Upon a determination by the Board of Regents that governance problems are a substantial factor in a district's chronic underperformance, allowing the Regents to appoint a three-member Education Oversight Board with all the powers and duties of the board of education. Such a finding would result in the removal of the board of education and, upon recommendation of the Oversight Board, the superintendent as well. An education oversight board would report directly to the Regents and the Commissioner.

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

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, the 2013-14 rate methodology included a three percent trend factor for direct care costs of school age providers as recommended by the Department. Along with administrative revisions providing flexibility in tuition rate calculations, the 2014-15 rate methodology included a 3.8 percent trend factor, which was equivalent to the three year average of state-wide total personal income growth. The increases of the past two years provided short-term relief, but did not address many of the shortcomings of the current rate setting system.

Based on provider testimony at the Special Education Financial Advisory Workgroup meetings, and the Department's analysis of submitted cost data, a lack of predictable growth to fund increasing costs and many technical aspects of the current rate setting methodology 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.

THE SOLUTION:

To correspond with administrative revision adopted for 2014-15 to improve the existing tuition rate setting methodology for Special Act School Districts and 853 Schools, the following legislative proposals would seek to address the financial stability of the schools 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 index. 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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TAP Eligibility for Early College High School Students

THE ISSUE:

Traditionally underrepresented students in postsecondary education need strong, innovative programs designed to boost their level of participation in college. Creating such programs that will increase these students' access to postsecondary education and reduce the cost to obtain a college education is a priority of the Regents and the Department.

The personal and societal value of a postsecondary education is clear in terms of lifetime earnings and career opportunities. Early college high schools (ECHSs), which are high school programs where students are exposed to college courses, provide students with both the academic rigor they need to complete a postsecondary degree, the opportunity to graduate from high school with college credits, and eliminate the need for remediation.

THE SOLUTION:

The creation of early college high schools is an innovative strategy that has proven effective. Our proposal would provide continued and sustained funding to support the expansion of these programs throughout the state in high-needs communities. Among other provisions, the legislation would:

- Accelerate completion of students' high school studies while allowing them to earn up to 60 transferable college credits at no cost to the student.
- Provide support to ECHS programs as they serve school districts with populations of high-needs students.
- Maintain consistency of the mission of the Tuition Assistance Program (TAP).
- Increase access to postsecondary education for underrepresented students and reduce the students' cost for obtaining a postsecondary degree.

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Education Equity for DREAMers Act

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 them aid means outright denying many 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 and the collegiate science and technology entry program (C-STEP).
- Allow undocumented immigrants and their families, who have a taxpayer identification number, to open a New York 529 family tuition savings account.

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Tuition Assistance Program (TAP) for Students with Disabilities

THE ISSUE:

The 2007 state budget included provisions that established standards of academic progress (SAP) – or minimum GPA and credit requirements – that TAP eligible students must meet in order to continue receiving awards each semester or trimester. The purpose of this provision is to ensure that students are making progress towards completing their program before their TAP eligibility runs out.

Chapter 332 of the Laws of 1998 provides that students who are disabled, as defined by the federal Americans with Disabilities Act (ADA), are eligible for TAP payments if they are attending college part-time, as defined by the Commissioner. According to section 145-2.1(a)(4) of the Regulations of the Commissioner of Education, for a student with a disability, "*part-time study or attendance shall mean enrollment in credit-bearing courses applicable to the student's program, for at least three but less than 12 semester hours per semester or the equivalent, or at least two but less than eight semester hours per quarter*." However, while students with disabilities are eligible to receive TAP payments if they attend school part-time, they are still required by law to meet the prescribed standards of academic progress in order to continue receiving their TAP award.

Many students with disabilities, however, are not receiving their TAP award, for which they would otherwise be eligible under this provision, because they cannot reach the credit minimums prescribed in the SAP requirements. There appears to be a clear contradiction between: (1) the allowance for students with disabilities to be eligible for TAP and attend college at a rate slower than that identified for students who are not defined as disabled and; (2) the SAP provision which requires students with disabilities who are TAP eligible to meet minimum credit requirements that they cannot reach as they progress academically because they are attending college part-time.

THE SOLUTION:

The Regents proposal will allow students with disabilities who are TAP eligible, attending college part-time and meeting minimum GPA requirements to continue to receive their TAP awards, as they progress academically, in a manner that is measured proportionately to equivalent full-time study.

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Supporting Expansion of Career & Technical Education

THE ISSUE:

A 2011 report, entitled Pathways to Prosperity: Meeting the Challenges of Preparing Americans for the 21st Century, warned that our nation's education system is failing to prepare students for economic success, because, in part, "we have focused too exclusively on a few narrow pathways to success."

Because new jobs increasingly demand advanced skills, it has never been more critical to ensure that students have opportunities that include rigorous career and technical education (CTE) so that, upon graduation from high school, they are prepared for college and career success. With an estimated 3.3 million expected job openings in New York between 2010 and 2020, CTE has to be an integral part of our education and economic development strategy.

THE SOLUTION:

In addition to our commitment to provide students with Multiple Pathways to a high school diploma, the Department's proposed solutions would support the expansion of high-quality CTE options as follows:

- **Enhance BOCES Aid for CTE Programs:** The existing BOCES Aid formula – set in 1990 – only aids the first $30,000 of an instructor's salary, which results in shifting costs to local school district budgets. The Regents recommended that the aidable salary for all CTE programs be increased over a period of 5 years, until the gap between current salaries and actual salaries is closed.

- **Modernize Special Services Aid:** The existing special services aid supports CTE programming for school districts that are not in a BOCES and assumes a base cost of $3,900 per student. This amount has not been adjusted for inflation and is far below the cost of providing high-quality CTE programming. In its 2014-15 State Aid Proposal, the Regents recommended increasing the reimbursement for these programs until the per pupil base costs reflects the actual cost of providing the programs.

The Regents approach to CTE expansion has been deliberative and includes a multi-faceted approach. In addition to the specific proposals to enhance BOCES Aid and modernize special services aid, other Regents priorities are intended – in part – to support expansion of high-quality CTE opportunities, including expanding access to P-TECH schools and establishing regional high schools.

In order to ensure that the Department is able to meet the anticipated demand of CTE program approvals to provide these opportunities, the Regents and the Department additionally request $303,000 in order to provide sufficient staff resources to review, approve, and monitor CTE programs throughout the state.

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Safe and Supportive Schools

THE ISSUE:

In January 2013, in response to the Newtown, CT school shooting tragedy, the Board of Regents re-established the Safe Schools Task Force with the purpose of bringing together stakeholders to make recommendations to improve and sustain safe school buildings and positive learning environments for students to learn.

Comprehensive school safety statute in New York dates to The Safe Schools Against Violence in Education (SAVE) Act passed in 2000, the requirements of which included: promoting safe learning environments, development of district-wide safety plans, codes of conduct, and reporting of violent and disruptive incidents.

The Dignity for All Students Act passed in 2012 further addressed school climate by outlawing bullying, harassment and discrimination. In 2013, the law was amended to include cyberbullying.

While there are laws enacted to provide for safe and positive learning environments, the state does not have the capacity to provide optimal technical assistance or promote expansion of best practices, particularly since federal funding through the Safe and Drug Free Schools program lapsed.

THE SOLUTION:

In order to better support school districts and to better ensure that all students are able to attend school in a safe building with a positive learning environment, the Department requests additional funding and statutory changes to:

- **Enhance oversight through regular monitoring and audits:** The Department seeks funding to create capacity to closely review and analyze data from various school incident reporting mechanisms to identify districts with the greatest need of technical assistance and to conduct risk-based analysis where referral for a full audit may be appropriate. In addition the Department would support regular and meaningful professional development opportunities to school building and faculty leaders, school counselors, Dignity Act coordinators, school resource officers and others.

- **Provide support and ensure accountability:** The Department would seek to develop a school climate index, establish regional school safety teams to help local schools and districts develop school climate improvement systems, develop and administer an annual school climate survey, and identify schools that require corrective action plans.

- **Modernize Data Collection and Reporting:** The Department would develop a single comprehensive data system for the collection and reporting of incidents that also has the capability of capturing new data elements specific to a positive school climate index.

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

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 or 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 or teaching assistant fluent in a specific language is necessary for the school district to provide required bilingual/ESOL instruction.

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Equal Opportunity Employment Opportunities for All Act

THE ISSUE:

In June 2012, the federal government announced and later implemented the Deferred Action for Childhood Arrivals (DACA) policy which allows individuals who came to the US as children and meet established guidelines to request consideration of deferred action for a period of two years, subject to renewal.

The following general conditions must be met in order to receive deferred action:

- Be under the age of 31 as of June 15, 2012 and have come to the US before turning 16.
- Have continuously resided in the US since June 15, 2007; and
- Be currently enrolled in school, have graduated or obtained a certificate of completion from high school, have obtained a high school equivalency certificate, or be an honorably discharged veteran of the Coast Guard or Armed Forces.

DACA recipients are young people who generally derive their immigration status from their parents. If their parents are undocumented, most of these individuals have no current mechanism to obtain legal residency, even if they have lived most of their lives in the US.

Even though a DACA recipient is authorized to work, current federal and state law prohibits qualified individuals from obtaining licenses in certain professions, including but not limited to pharmacy, dentistry and engineering solely because of their immigration status.

THE SOLUTION:

The Regents propose enactment of legislation that would allow eligible DACA recipients to obtain a professional license, if they have met all other requirements for licensure except for their citizenship status, which will in turn give these individuals the opportunity to equal access to workplace opportunities by eliminating obstacles to receiving professional licensing.

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Ensuring the Future of New York State's National Institutional Accreditation Authority

THE ISSUE:

The Regents have been engaged in the evaluation of quality in higher education in New York since 1787. The federal government has recognized the Regents and the Commissioner as a national institutional accrediting agency since 1952. New York is the only state with this recognition. Currently, 24 New York colleges and universities hold institutional accreditation by the Regents.

Institutional accreditors must meet the federal government standards for accrediting agencies and ensure that accreditation and accreditation renewal processes and decisions are made consistent with those standards. These processes, which include review of voluminous documents and extensive site visits to the institutions, are time and resource intensive for the accrediting agencies.

Other institutional accrediting agencies in this region, (e.g., the Middle States Commission on Higher Education ("Middle States") and the Accrediting Council for Independent Colleges and Schools (ACICS), support their functions by charging their participating institutions. For example, Middle States charges its participating institutions both annual dues, calculated on the institution's total educational and general expenditures, as well as fees for various accreditation-related activities (information session fees, application fees, site visit fees and expenses, etc.).

Currently the Department does not charge for institutional accreditation. While there are many benefits of this accreditation function carried out by the Office of Higher Education through its Office of College and University Evaluation, accreditation activities divert limited financial and staff resources from other important functions (e.g., program registration and institutional oversight).

THE SOLUTION:

The Regents propose enactment of legislation that creates a state account in order to deposit fees related to supporting accreditation services, which would include the addition of dedicated accreditation staff, and expenses incurred in order to support and enhance conducting accreditation of institutions of higher education.

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