MEMORANDUM

May 8, 2019

TO:        Members of the Board of Trustees

FROM:      Kristina M. Johnson, Chancellor

SUBJECT:   Amendments to 8 NYCRR Part 602.8(c) (State Operating Assistance for Community Colleges) and 8 NYCRR Part 602.13 (Annual Financial Report)

Action Requested

The proposed resolution approves the state operating aid to community colleges as set forth in the 2019/20 enacted state budget.

Resolution

I recommend that the Board of Trustees adopt the following resolution:

Whereas in order to provide state operating assistance to the State University of New York (“SUNY”) and City University of New York (“CUNY”) community colleges for the 2019/20 fiscal year, it is necessary to adopt, on an emergency basis, amendments to Part 602.8(c) of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“NYCRR”) pertaining to state operating assistance for community colleges, and to publish a Notice of Proposed Rule Making pursuant to the State Administrative Procedure Act; and

Whereas Chapter 53 of the Laws of 2019 also provides that the formula for state financial assistance for operating expenses of the community colleges of SUNY and CUNY is to be developed jointly with the CUNY Board of Trustees, subject to the approval of the Director of the Budget; and

Whereas Chapter 53 of the Laws of 2019 also provides for the first change to the community college funding formula since the early 1990s by establishing a “floor” for Direct State Tax Support of 98
percent of the amount budgeted for by each college in their approved 2018/19 operating budgets, while still recognizing enrollment growth by increasing the per full-time equivalent (“FTE”) funding by $100, from $2,847 to $2,947; and

Whereas based on preliminary enrollment numbers for 2019/20, 10 colleges will benefit from this floor provision; avoiding $2.6M in loss of direct state tax support on a year-to-year basis; now, therefore, be it

Resolved that the Chancellor, or designee, be, and hereby is authorized and directed to prepare, in accordance with provisions of the State Administrative Procedure Act, a Notice of Emergency Adoption and a Proposed Rulemaking to amend both 8 NYCRR section 602.8(c) and 8 NYCRR section 602.13, to read as follows, subject to the approval of the Director of the Budget (brackets denote old material to be deleted; underlining denotes new material to be added):

Section 602.8(c)

(c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

(i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the current college fiscal year the total of the following:

(a) the greater of (1) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [$2,847] $2,947, or (2) 98 percent of the amount of basic State financial assistance for community colleges approved by the State University of New York Trustees for the 2018/19 academic year; and

(b) up to one-half (50%) of rental costs for physical space.
(2) **Non-full opportunity colleges.** The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

   (a) the greater of (1) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,373] \$2,457, or (2) 98 percent of the amount of basic State financial assistance for community colleges approved by the State University of New York Trustees for the 2018/19 academic year; and

   (b) up to one-half (50%) of rental cost for physical space.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.

**Section 602.13**

(a) Pursuant to section 30 of the General Municipal Law, the annual financial report shall be certified by the chief fiscal officer of the college and shall be filed with the State Comptroller within 60 days after the close of the college fiscal year. The chief fiscal officer is the college treasurer for purposes of this certification.

(b) The annual financial report shall be in compliance with article 126 of the Education Law, this Subchapter, and the manual for community college business offices, and on the forms and in accordance with instructions promulgated by the State Comptroller.
(c) The State University of New York, which shall also receive copies of the annual financial report, shall review the annual financial report for the purpose of the initial determination of the State liability.

(d) Any overpayment in State financial assistance for operating costs, as determined in the review of the annual financial report, shall be deducted from the second quarterly advance payment of State aid for the succeeding college fiscal year provided, however, that in no case shall the amount of basic state financial assistance for operating costs received in the 2019/20 academic year be less than 98 percent of the amount of basic state financial assistance for operating costs approved by the State University Board of Trustees for the 2018/19 academic year.

(e) Any underpayment in State financial assistance for operating costs, as determined in the review of the annual financial report, shall be processed in accordance with sections 602.3 and 602.9 of this Part.

(f) The college shall be subject to audit by the Office of the State Comptroller for the purpose of the final determination of the State liability.

**Background**

This resolution authorizes the amendment of the existing limitations formula for state financial assistance for operating expenses of SUNY and CUNY community colleges. Chapter 53 of the Laws of 2019 has authorized both an increase in the operating aid for SUNY and CUNY community colleges as well as instituting the first operating support “floor” for these institutions (98 percent of the amount approved by the Board of Trustees for the 2018/19 academic year).

This resolution authorizes the amendment of the existing University regulations, which set forth the formula for State financial assistance for operating expenses of SUNY and CUNY’s community colleges. Formal rulemaking is required, and this resolution authorizes both the emergency adoption of the rules and the publication of a Notice of Proposed Rulemaking. The amendments implement the requirements of Chapter 53 of the Laws of 2019.

Amendments to the limitations formula are developed jointly with the CUNY Board of Trustees and are subject to the approval of the Director of the Budget. CUNY administrators have formally advised SUNY of their intention to recommend passage of the amendments to their Board of Trustees. Senior staff of the Division of the Budget have advised that they will recommend approval of the amendments by the Director of the Budget upon submission of the amendments after formal action by the SUNY and CUNY Boards of Trustees.

Under the provisions of the Chapter 53 of the Laws of 2019, basic state financial assistance for operating costs of community colleges for the 2019/20
community college fiscal year has been increased from $2,847 to $2,947, per full-time equivalent student. This amount will be subject to limitations based upon a calculation of the greater of either the actual full-time equivalent credit and non-credit remedial enrollment for the 2018/19 college fiscal year, the weighted average or college credit and non-credit remedial enrollment for the previous three years, or 98 percent of the amount of basic state financial assistance approved by the Board of Trustees for each community college in the 2018/19 academic year, whichever may be greater. Upon approval of the regulations, the community college base aid payments scheduled for September 2019, January 2020, and March 2020 will reflect the increase in base aid. As all SUNY community colleges are full opportunity, the revised $2,947 figure and operating “floor” applies to all colleges.

The Notice of Emergency Adoption and the Notice of Proposed Rule Making are the first steps in the rulemaking process. A Notice of Final Adoption will be presented to the Board of Trustees when appropriate.