MEMORANDUM

June 29, 2020

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 2020/21 enacted state budget and makes accommodations for changes that may be made based on the expanded powers provided to the Director of the Budget per Chapter 53 of the Laws of 2020.

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 2020/21 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 Emergency Adoption and Proposed Rule Making pursuant to the State Administrative Procedure Act; and

Whereas Chapter 53 of the Laws of 2020 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 2020 also eliminates the 2019/20 “floor” provided to community colleges and returns the state support model to one based on volume, and holds the per full-time equivalent (“FTE”) funding at $2,947/FTE; and

Whereas Chapter 53 of the Laws of 2020 also provides that the Director of the Budget has the authority, upon a declaration that the State is fiscally “imbalanced” at several points in the state fiscal year, to make reductions in planned support for community colleges and other entities supported in part by Direct State Tax Support; with initial reports indicating that such reductions could be as much as 50 percent dependent on federal actions to support states in the midst of the current pandemic; and

Whereas based on initial enrollment numbers for 2020/21, it was estimated that 27 colleges would have experienced a loss of $18.3M in Direct State Tax Support versus the prior year, with three (3) benefiting slightly. However, following a refreshed survey of enrollment expectations for 2020/21 in early April, these projections are adjusted to reflect 27 colleges facing a $27.7M loss on a year-to-year basis, with three (3) increasing by a total of $0.2M; 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, as well as any re-issuance of such Notice of Emergency Adoption as may be necessary during the pendency of the Proposed Rulemaking, to amend both 8 NYCRR section 602.8(c) and 8 NYCRR section 602.13, to read as follows (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] lesser 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 $2,947; 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] the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by the $2,947 amount as adjusted by actions taken by the Director of the State Budget in accordance with the additional authority granted by Chapter 53 of the Laws of 2020. Notwithstanding the preceding, if, following discussion and agreement between the chancellor of the State University of New York, or designee, and the director of the state budget, reductions in funding executed pursuant to Chapter 53 of the Laws of 2020 may be allocated to colleges in an alternative methodology that is in the best interest of the colleges operating under the program of the State University of New York and the SUNY system, then the chancellor may present a plan to do so to the board of trustees for approval and such plan will be used to provide available funding to colleges; and

(b) up to one half (50 percent) 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 percent) 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 percent) 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] lesser 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 $2,457; 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] the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by the $2,457 amount as adjusted by actions taken by the Director of the State Budget in accordance with the additional authority granted by Chapter 53 of the Laws of 2020. Notwithstanding the preceding, if, following discussion and agreement between the chancellor of the State University of New York, or designee, and the director of the state budget, reductions in funding executed pursuant to Chapter 53 of the Laws of 2020 may be allocated to colleges in an alternative manner that is in the best interest of the colleges operating under the program of the State University of New York and the SUNY system, then the chancellor may present a plan to do so to the board of trustees for approval and such plan will be used to provide available funding to colleges; and
   (b) up to one half (50 percent) 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.
(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] such adjustments shall be made in accordance with the availability, or lack thereof, of funding provided by the State of New York following any execution of the Director of the Budget’s additional powers as provided by Chapter 53 of the Laws of 2020.

(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 2020 was approved by the Legislature and signed by the Governor of the State of New York with no increase in the operating aid for SUNY and CUNY community colleges as well as the elimination of the operating support “floor” for these institutions (98 percent of the amount approved by the Board of Trustees for the 2018/19 academic year) provided in 2019/20. In addition, Chapter 53 of the Laws of 2020 provides the Director of the Budget certain expanded powers to limit State support for various entities, including but not limited to the 30 community colleges operating under the program of the State University of New York. Based on initial information,
these reductions could be as much as 50 percent ($230M) in additional lost Direct State Tax Support for these institutions.

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. These regulations have been proposed with appropriate flexibility to allow the 30 community colleges to set their budgets with local sponsors and boards of Trustees, but allow the Chancellor of the State University of New York to be empowered to react to changes that may be made necessary by action taken at the State level. Such changes, with the approval of the Division of Budget, would seek to limit financial impacts to the institutions. The Board of Trustees will be informed of the recommended changes and will have the opportunity to provide feedback on the development and execution of the plan, as well as ultimate approval authority. An example of the adjusted methodology could include maximizing federal campus stimulus funds to limit disproportionate impact on colleges while still achieving the required savings demanded by the State of New York.

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 2020.

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.

Upon approval of the regulations, and following any adjustments required by the execution of the Director of the Budget’s expanded powers, the community college base aid payments scheduled for June 2020, September 2020, January 2021, and March 2021 will reflect the $2,947 figure – or such adjusted figure – as all community colleges operating under the program of the State University of New York are considered full opportunity 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.