

## **Assessment of Public Comment Community College Rulemaking Proposal**

### **AGENCY:**

The State University of New York

### **ACTION:**

Revised Rulemaking

### **BACKGROUND:**

In June 2025, SUNY initiated rulemaking pursuant to the State Administrative Procedure Act, including provisions related to (1) community college temporary leadership; (2) Chancellor feedback on candidates; and (3) presidential contract review. During the open public comment period, SUNY received 35 written public comments and held five public listening sessions, resulting in thoughtful and valuable feedback from students, faculty, college trustees, community members, and other campus stakeholders from across the State. SUNY has now reviewed all public comments and considered all recommendations and alternatives raised by the public. The following is SUNY's assessment of the comments received, consistent with State Administrative Procedure Act Section 202(4-a)(b). Note that comments are grouped and organized by support or opposition, as well as by thematic "issue" as described by submitters of the comments. Use of these headings in this Assessment of Public Comment is for clarity only, and does not reflect any explicit or tacit substantive agreement with those descriptions by SUNY.

### **AMENDMENTS IN REVISED RULEMAKING:**

#### **1. Limiting the Scope of the Revised Rulemaking to Community College Temporary Leadership**

SUNY has made the determination to limit the revised rulemaking to a single issue: community college temporary leadership.

#### **2. Revised Rulemaking on Community College Temporary Leadership:**

This portion of the rule is largely unchanged from the initial proposed rulemaking. However, several revisions were made in response to public comments received. First, several comments recommended that the rule be updated so that any time periods/time clocks were counted prospectively only, rather than retroactively. SUNY agrees and has made that change. In addition, in response to public comment, SUNY has also made a revision to clarify that the SUNY Board of Trustees is authorized, in its discretion, to grant more than one extension to an administrator-in-charge. Finally, SUNY made several other wording and technical changes to clarify and conform the provisions of the revised rule.

## RESPONSE TO PUBLIC COMMENTS

### A. Comments Opposing or Suggesting Revisions to Proposed Rule

#### ISSUE: RETROACTIVITY

**COMMENT:** Reconsideration of the retroactive application provision would make the proposed rule more amenable to the local boards and community colleges. Retroactive application negatively impacts the rights of individuals appointed prior to the adoption of a new regulation.

**RESPONSE:** SUNY maintains that the effective dates in the initial Proposed Rule were legally sound due to the important public interests at stake. However, for policy reasons and in response to public comment, the Revised Rulemaking has clarified that any time periods or time clocks in the Revised Rule will count prospectively only, rather than retroactively.

#### ISSUE: EXCEEDING STATUTORY AUTHORITY – EMPLOYMENT CONTRACTS

**COMMENT:** The Proposed Rule misconstrues Ed. Law 6306(7) to provide a basis for review and approval of a community college president’s employment contract and to submit as part of their annual budget any employment contract amendment or extension by the SUNY Chancellor or an annual attestation that no contract amendment or extension has occurred. Community college trustees are required by law to balance budgets, determine initial and subsequent contractual terms into a balanced budget that allows the local board to secure and maintain outstanding presidential leadership. This must be done at the local level and not relinquished to a centralized body.

**RESPONSE:** SUNY does not believe that there is any conflict between the Proposed Rule and the provisions of the Education Law. Education Law § 6306(7) states that “the board of trustees of each community college may enter into any contract or agreement deemed necessary or appropriate for the effective operation of the college” . . . “pursuant to such regulations and limitations as may be established and prescribed by the state university trustees . . .”. Even setting aside the clear and specific grant of contracting authority under Education Law § 6306(7), Education Law § 355(1)(c) provides that the SUNY Board of Trustees shall be responsible for “the provisions of standards and regulations covering the organization and operation of [community college] programs, courses, and curricula, financing arrangements, state financial assistance, tuition chargers and fees, *and such other matters as may be involved in the operation of such colleges.*” (emphasis added). The SUNY Board of Trustees has very clear authority to regulate and establish requirements in all areas of community college contracting, whether through formal rulemaking or by setting other “standards” or “limitations” as set forth in these

statutes. Nevertheless, upon review and consideration of all public comments, and for policy reasons, SUNY has removed the provisions related to contract review from the Revised Rule.

### **ISSUE: EXCEEDING STATUTORY AUTHORITY – DURATION OF INTERIM APPOINTMENTS**

**COMMENT:** There is no statutory authority for the SUNY Board to limit the duration of an appointment of an administrator-in-charge during a gap in leadership and local boards are well-equipped to select an administrator-in-charge during such gaps that fit the unique needs of their community college.

**RESPONSE:** The converse is true: prior to this Proposed Rule, there was *no* statutory or regulatory provision *allowing* a community college Board of Trustees to directly appoint an administrator-in-charge without SUNY Board review and approval – period. As noted above, Education Law explicitly requires SUNY Board approval of community college presidential appointments. In addition, longstanding regulations at 8 NYCRR Part 604.2 state that *all* community college Presidential appointments require SUNY Board approval, including temporary appointments such as Acting or Interim presidents. However, in practice there have been times that a leadership appointment is needed and Board schedules do not allow for an immediate SUNY determination regarding approval. Accordingly, existing SUNY guidance has allowed for the direct appointment of “administrators-in-charge” by local community college boards of trustees. This carveout is intended to be reserved for short periods of time when the institution would otherwise be left with a leadership gap. For example, existing advisory guidance for community college presidential searches states that: “If a president is needed prior to the completion of the search, the college may appoint an administrator-in-charge for up to six months, or for a longer period with approval of the Chancellor. Typically, if the college needs longer-term temporary leadership, the college trustees may appoint an interim or acting president subject to the approval of the Chancellor and SUNY Board of Trustees.”

The Proposed Rule, for the first time, will grant formal regulatory authorization to local community college boards to directly appoint temporary leadership without SUNY Board approval. However, with this new grant of authority, it is appropriate for SUNY to implement corresponding guardrails and procedures to ensure proper SUNY oversight is maintained. In other words, contrary to this comment, the SUNY Board is not “limiting” the duration of the appointment of an administrator-in-charge. The SUNY Board is *authorizing* direct local appointments *for the first time* in State regulations, but with appropriate limitations and oversight in place.

### **ISSUE: EXCEEDING STATUTORY AUTHORITY – CHANCELLOR INTERVIEWS**

**COMMENT:** The SUNY Board only has the authority to approve the appointment of a community college president after appointment has been made by the community college, as Education Law Section 6306(2) says the board of trustees of the community college shall appoint a president for the college subject to the approval by the state university trustees. The Proposed Rule violates the rule articulated in *Jones v. Berman*, 37 N.Y.2d 42, 53 (N.Y. 1975) which states “administrative agencies can only promulgate rules to further implementation of the law...they have no authority to create a rule out of harmony with the statute.”

**COMMENT:** The Proposed Rule misconstrues Education Law §§ 355 and 6306, as there is no provision granting the SUNY Chancellor authority to approve or deny a presidential candidate before an appointment by the local boards.

**COMMENT:** The Proposed Rule violates NYS Education Law 6306 as the law makes no provision for the involvement of the SUNY Chancellor in the approval of college president appointments or allow the Chancellor to examine and preclear a slate of candidates for consideration by the community college board of trustees.

**COMMENT:** The SUNY Guidelines for Presidential Searches for Community Colleges and SUNY Policy are mere recommendations rather than requirements.

**RESPONSE:** SUNY notes that existing regulatory language in 8 NYCRR Part 604.2 already provides that “approval or disapproval of the appointment of a president by the State University trustees shall made in accordance with the State University trustees guidelines for the selection and approval of such appointments”. In addition, the Proposed Rule is completely consistent with Education Law § 6306(2). Under the Proposed Rule, the local board maintained the power to appoint the President of their choice, subject to the approval of the SUNY Board of Trustees. The purpose of having three interviews is for the Chancellor to provide feedback; the Chancellor does *not* directly approve or disapprove of candidates as part of this process. The process for receiving Chancellor feedback on finalists gives the local board additional context and information before selecting a candidate, but there was no limitation on the local board’s authority to ultimately appoint the candidate of their choice for review and approval by SUNY. Nonetheless, upon review and consideration of all public comments and for policy reasons, SUNY has limited the Revised Rulemaking to the temporary leadership provisions.

#### **ISSUE: NECESSITY OF RULE/POTENTIAL FOR DELAYS**

**COMMENT:** It is unknown whether future chancellors will want to participate in the selection process by interviewing multiple candidates.

**COMMENT:** The Proposed Rule creates an extra layer in the presidential search process where there are already multiple delays.

**COMMENT:** A failed search for a community college president would necessitate a new search that would extend beyond the timeframe set forth in the Proposed Rule. Seeking the Chancellor's approval would cause unnecessary and costly delays for community colleges who need to efficiently complete a search.

**RESPONSE:** SUNY believes that the Proposed Rule would not result in any meaningful change to the timeline for appointments of Community College presidential candidates, and would ensure that the process is finalized with successful permanent appointments. In addition, The purpose of having three interviews is for the Chancellor to provide feedback; the Chancellor does *not* directly approve or disapprove of candidates as part of this process. The searches that incorporated this process beginning in November 2024 ran smoothly without delays. Further, contract review prior to a community college presidential appointment is already authorized by the Guidelines for the Selection and Approval of Community College Presidents, adopted by the SUNY Board of Trustees in 1991. Nonetheless, upon consideration of public comment and policy considerations and as described above, the Revised Rule is limited to the issue of community college temporary leadership.

**ISSUE: COMPLIANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT**

**COMMENT:** The SUNY Board adopted the contract review resolution without following the correct rulemaking process and their justification was insufficient.

**RESPONSE:** SUNY has implemented a rigorous and transparent rulemaking process that adheres to the State Administrative Procedure Act, including a full notice and comment period, multiple listening sessions across the state and online, and ample justification for the Proposed Rule. As described above, several amendments were made to the Revised Rule in response to public comment and upon further consideration by SUNY. In addition, SUNY will accept additional public comment upon publication of the Revised Rule and will consider all public input before adopting any final rule. While not at issue in this Rule, SUNY also notes that not every SUNY initiative related to community colleges requires formal rulemaking. For example, the longstanding requirement in the SUNY Guidelines for the Selection and Approval of Community College Presidents directing that the Chancellor take the terms and conditions of a presidential appointment contract into consideration was adopted by Board resolution in December 1991.

**ISSUE: JUSTIFICATION FOR RULE/LACK OF SPECIAL EXPERTISE**

**COMMENT:** SUNY's justification for the Proposed Rule is not strong enough. SUNY should state how it determined that three finalists would be the appropriate number to be sent to the Chancellor.

**COMMENT:** There was no special expertise or competence in the field when developing the Rule in that the numerical requirements for candidate interviews and temporary leadership durations were arbitrarily selected.

**RESPONSE:** SUNY's rulemaking process was thorough, robust and informed by expertise across SUNY System Administration and the Board of Trustees. This expertise was gained through many collective years of direct experience in higher education generally and with presidential search and appointment processes specifically.

#### **ISSUE: HOME RULE**

**COMMENT:** The Proposed Rule violates the home rule provisions of the NYS Constitution, which give local governments the power to elect or appoint local officials and empowers counties to adopt charters establishing and empowering new local officers. The Proposed Rule undercuts these authorities granted by the NYS Constitution.

**RESPONSE:** Under both the Proposed Rule and the Revised Rule, the current shared governance structure remains unchanged, and local authorities continue to retain the same authority to appoint community college presidents subject to SUNY Board approval. No changes will be made to the proposed rule in relation to this comment.

#### **ISSUE: EXCEEDING STATUTORY AUTHORITY – LEGISLATION VERSUS REGULATION**

**COMMENT:** The Proposed Rule circumvents the proper legislative process for addressing the problems identified by SUNY Board, and encroaches on the legislative functions constitutionally vested in the State Legislature.

**RESPONSE:** The actions in the Proposed and Revised Rule are all properly within SUNY's statutory authority to issue regulations and policy pursuant to the requirements of Education Law Article 126. No changes will be made to the proposed rule in relation to this comment.

#### **ISSUE: LOCAL CONTROL/CONNECTION TO LOCAL COMMUNITY**

**COMMENT:** The proposed rule seeks to illegally expand the role and authority of the SUNY Board of Trustees and Chancellor.

**COMMENT:** There is clear legislative intent in the specific grant of statutory authority under Education Law § 355(2)(g) to the SUNY Board to appoint the head of each state operated institution and to local boards to appoint the president of their community college subject to the approval of the state university trustees in Education Law § 6306.

**COMMENT:** The distinction between state-operated and state-aided institutions is evidenced by the statutory framework, *i.e.*, the board of trustees that administers each college has five members appointed by the local legislative community and four appointed by Governor, which receive funding jointly from its local sponsor, its student body and the State.

**COMMENT:** The SUNY Board and Chancellor seek to usurp the long-standing and statutorily-grounded local control of community colleges.

**COMMENT:** Former SUNY General Counsel Stanford H. Levine said that community colleges are state-aided institutions, not state-operated.

**COMMENT:** In the Report of the Temporary Commission on the Need for a State University, the drafters intended for community colleges and the SUNY system to be distinguished from each other as seen by the composition of the Board of Trustees with five members being appointed by the community's local initiatives and four appointed by the Governor.

**COMMENT:** The 1948 Commission Report states that institutions operated by the state should be subject to overall central administration by SUNY Board and administration of community colleges are the responsibility of local boards. They note the SUNY Board is only charged with general supervision, noting that it was never intended for SUNY to oversee the selection and management of community colleges.

**COMMENT:** The Proposed Rule erodes local autonomy in favor of enhanced state level involvement and is contrary to legislative policy.

**COMMENT:** State-operated colleges are under SUNY control and that model was never intended for community colleges, as they serve different missions, populations, and are funded through a unique partnership between local sponsors, the state and students. The proposed rule erases that distinction.

**COMMENT:** The SUNY Chancellor cannot know the intricacies of each community the way the local boards do when appointing a president. Further, without a President aware of these details, the Middle States Accreditation process would be distinctly more challenging.

**COMMENT:** The Proposed Rule and its justification ignored the local circumstances present when a community college elected to pay the departing president a sum of money.

**COMMENT:** The local board is responsible for the college and understands best what is commercially reasonable.

**COMMENT:** The Proposed Rule will allow the SUNY Chancellor to exert a level of control not contemplated by the law and to substitute their judgment over the judgment of individuals who are intimately familiar with the specific needs of the community college and the local boards of trustees in assessing leadership.

**COMMENT:** Local control is essential to the effective governance of community colleges and the proposed rule would greatly interfere with the close relationship that has been established over the years between the local boards, counties, and the community colleges and any perception that the local community college was controlled by Albany and not the well-known and -respected trustees would lessen the community college's ability to build cooperative agreements and cost-sharing initiatives.

**COMMENT:** Local community college boards of trustees prioritize the needs of the community and choose a president that reflects their communities' values. Chancellor input on this process will dilute the importance of these values when choosing a new president and rather the focus will be on which candidate is most suitable to the Chancellor by substituting his own judgment over the judgement of individuals who are innately familiar with the specific needs of the community college.

**COMMENT:** The State's process under the proposed rule would become politicized, opaque, and far removed from the realities of the community. While the Rule is meant to provide additional accountability and transparency in the presidential search process, the reality is that such a rule would further centralize State control that would undermine the flexibility community colleges require.

**COMMENT:** The proposed rule dilutes the power of the local college's board of trustees and county executive's office. When local trustees and presidents have meaningful authority, they forge powerful partnerships with employers, secure equipment donations, and align curriculum with regional needs – creating pathways to family-sustaining careers.

**COMMENT:** The Proposed Rule unnecessarily and inconveniently further centralizes state control in a manner that undermines flexibility and agility, creating undue complications with no improvements. The Proposed Rule replaces bottom-up governance with top-down rule.

**COMMENT:** Large organizations operate best when de-centralized.

**COMMENT:** The most successful model is one where SUNY provides support while respecting the authority of local trustees who live and work in the communities they serve.

**COMMENT:** The Proposed Rule replaces local accountability with distant bureaucracy, silences community input, and threatens investment in local education.

**COMMENT:** Maintaining local control helps to maintain excellence and educational access for students.

**RESPONSE:** SUNY acknowledges and appreciates the importance of the local participation in shared governance of SUNY community college, both for leadership appointments and otherwise, and values the unique perspective local trustees bring to each institution. SUNY has no intention of diminishing that perspective. The Proposed Rule (and now Revised Rule) is intended to clarify the role SUNY plays in the presidential search and appointment process and is consistent with the statutory authority granted to SUNY Trustees in New York State Education Law §§355 and 6306. This Rule is a valid and appropriate means to provide clarity around the community college president appointment process and to ensure that every community college has capable and permanent leadership. The Rule continues to entrust the local Board of Trustees with the power to review and identify the presidential candidate to appoint, subject to SUNY Board approval. SUNY recognizes each community college has unique local needs that are vital to the selection of a new president. The Proposed Rule will not diminish or obscure the authority of the local Boards. The Rule is fully consistent with the statutory process; it does not grant the SUNY Board the power to directly *appoint* a community college president, only to approve or disapprove the appointment by the local Board of Trustees. The Rule makes no attempt to conflate community colleges and state-operated institutions, and maintains the current community college shared governance structure. The Rule continues to ensure that local stakeholders have a meaningful role in the appointment process.

#### **ISSUE: MISCELLANEOUS**

**COMMENT:** SUNY should add advocacy work on behalf of community colleges to the government relations efforts of SUNY.

**RESPONSE:** This is not at issue in the Proposed Rule. No changes will be made to the proposed rule in relation to this comment.

**COMMENT:** SUNY should consider eliminating the unfunded mandate for each college to have a “DEI Director.”

**RESPONSE:** This is not at issue in the Proposed Rule. No changes will be made to the proposed rule in relation to this comment.

**COMMENT:** SUNY should listen to local advisory boards and employers in regard to the training and education needed for local jobs.

**RESPONSE:** This is not at issue in the Proposed Rule. No changes will be made to the proposed rule in relation to this comment.

**COMMENT:** A state funding shortfall of \$300 million has forced the consolidation of departments, cutting costs, and a toxic campus atmosphere at Nassau Community College. Increased funding and not increased oversight will fix this.

**RESPONSE:** Funding levels are not at issue in the Proposed Rule. No changes will be made to the proposed rule in relation to this comment.

**COMMENT:** Faculty governance participation on presidential searches should be codified. While the Proposed Rule addresses shared governance, it can do more.

**RESPONSE:** SUNY is committed to a process that empowers participation by all community stakeholders. The existing SUNY Guidelines for the Selection and Approval of Community College Presidents provides for representation by relevant constituencies including, but not limited to, teaching faculty, administration, support staff, students, alumni, the college sponsor, and the local board itself in the interview and feedback process.

**COMMENT:** The Proposed Rule would cause attempts to “game the system” with some community colleges submitting less qualified candidates to force the Chancellor to pick one candidate over the other.

**RESPONSE:** SUNY notes that while this provision of the Proposed Rule was to be used to provide feedback to local boards and was intended to lead to expedited and successful candidate appointments, the Revised Rule is limited to community college temporary leadership.

**COMMENT:** The Proposed Rule is excessive oversight and unreasonable which will confuse presidents about their reporting structure.

**RESPONSE:** The Proposed Rule does not create any change to the reporting structure applicable to Presidents. No changes will be made to the proposed rule in relation to this comment.

### ***B. Comments in Support of Proposed Rule***

While SUNY will not respond in detail to all comments in support of the Proposed Rule, a representative sample of these comments are shared here as part of SUNY’s Assessment of Public Comment.

**COMMENT:** Clarification of authority encourages boards to assure that the search committee and choice of presidents are harmonious with local concerns and SUNY’s statewide mission.

**COMMENT:** Proposed rule provides long-overdue guardrails that balance the principle of local autonomy with SUNY’s statutory oversight responsibilities.

**COMMENT:** Proposed rule strengthens transparency in presidential searches, ensures proper vetting of candidates, introduces limits of interim and acting appointments which elevate the integrity of leadership pipelines and ultimately serve students, faculty, and communities.

**COMMENT:** Proposed rule supports local boards by requiring clearer processes and hiring practices.

**COMMENT:** Proposed rule will promote government efficiency, transparency, and accountability.

**COMMENT:** Community Colleges need stable leadership and with acting presidents and administrators in charge staying in their position for too long, it hinders the college's ability to move forward.

**COMMENT:** Voting yes on the proposed rule will bring back integrity into the presidential selection process.

**COMMENT:** Proposed rule will enhance oversight of hiring and contracting processes, creating an essential equalizer among SUNY campuses.

**COMMENT:** Proposed rule will promote qualified and stable leadership which will foster a shared vision that can adapt to changing regional and workforce demands which promotes student growth and success by upholding academic standards aligned with each institution's mission.

**COMMENT:** Presentation of three presidential candidates can avoid multiple and costly presidential searches, and ensure strongest candidates are selected so the SUNY system as a whole is strong.

**COMMENT:** Providing a template for presidential contracts and reviewing proposed contracts builds transparency and trust for all constituents and taxpayers.

**COMMENT:** The proposal supports autonomy with clarified and stronger checks and balances that will help local concerns and SUNY's statewide mission.

**COMMENT:** More oversight into the quality, consistency and terms of employment on campus presidents will ultimately minimize the need for SUNY to interfere with community college operations.

**COMMENT:** Lack of stability and permanent leadership creates operational and accreditation challenges. The proposed rule will help support a stronger code to avoid accreditation issues and

consequent implications for accreditation for Middle States. When a community college has no permanent president, Middle States views that as a governance process defect.

**COMMENT:** Unapproved appointments which are in place for an extended period cause the Board's oversight duties to be compromised.

**COMMENT:** Rule focuses on ensuring strong leadership as a shared responsibility between local board and the SUNY Board of Trustees.

**COMMENT:** Needs to be firmly set titles for temporary community college leadership with formal limits on how long they can serve in temporary capacity.

**COMMENT:** It is better for SUNY as a whole when colleges don't have frequently changing administrations and interim presidents for long periods of time.

**COMMENT:** Taxpayers want and expect SUNY to exercise oversight.

**COMMENT:** The Proposed Rule addresses the long-standing policy gaps in the implementation of §355(1) and §6306(2) by strengthening SUNY's oversight function while honoring the vital role local boards and the principles of shared governance.

**COMMENT:** The Proposed Rule's contract oversight protects campuses and the SUNY System from reputational and financial harm.

**COMMENT:** In a recent presidential search, the collaboration between SUNY and the search firm worked well. The search committee was constructed with the people who were necessary to making the selection representing the county and the college. They received SUNY resources and SUNY was included in the search process but did not have any undue steering of the selection process.

**COMMENT:** Contract review ensures that taxpayer money is being spent well.