

# State Aid

## & FINANCIAL PLANNING SERVICE



# 2016-17 Budget Development School District Guidelines

February 2016



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# Table of Contents

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<b>Legal Requirements Related to School Budget Development .....</b>	<b>5</b>
Legal Notices .....	5
SED Guidance on Separate Propositions .....	6
Petitions .....	6
Board of Education Approval of Proposed Budget .....	6
Property Tax Report Card.....	6-13
Absentee Ballots .....	14
Salary Disclosure Requirements .....	14-17
Budget Statement and Required Attachments .....	18-19
School District Budgets: Alignment of Account Codes to Three-Part Budget Format.....	20
Budget Hearing .....	21
Budget Notice .....	21-22
Annual Election and Budget Vote/Annual Meeting .....	23
Threshold for Budget Approval .....	23
Budget Passed or Defeated? .....	23
 <b>Contingent Budget .....</b>	 <b>24</b>
Structure of Contingent Budget .....	24
Contingent Budget Administrative Cap .....	24-25
Contingent Budget Fact Sheet.....	26-27
Contingent Budgets and BOCES Capital Projects .....	28
Modification/Amendment of a Contingent Budget .....	28
Budget Transfers Under a Contingent Budget .....	28
Determination of Ordinary Contingent Expenses .....	28
Board of Education Responsibility for the Determination of Ordinary Contingent Expenses.....	29-30
Options Open to the Board of Education .....	30
Misconceptions .....	31
Ordinary Contingent Expenses.....	31
Public Employees Fair Employment Act (Taylor Law).....	32
Transportation.....	32
Public Library .....	32

Use of School Buildings & Grounds by Outside Agencies .....	33
Equipment.....	33
Pupil Supplies .....	33-34
Budget Format .....	34
Formal Opinion of Counsel No. 213 (1967) .....	35-38
<b>Appendices .....</b>	<b>39</b>
A – School Budget Deadlines & Actions/Budget Development Calendar .....	40-44
B – Summaries of Selected Decisions of the Commissioner of Education	
Related to School District Budgets.....	45-63
C – Voter Approval Thresholds for Budgets & Propositions.....	64
D – BOCES Capital Project Expenses .....	65-66
E – Contingency Budgets .....	67-69
F – Section 2023-a of Education Law – Limitations Upon School District	
Tax Levies.....	70-76

# LEGAL REQUIREMENTS RELATED TO SCHOOL BUDGET DEVELOPMENT

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The following pages outline the actions that are required to produce the annual school budget. The attached calendar (updated yearly) outlines year-specific dates that coincide with the events listed below **(See Appendix A)**.

Summaries of significant decisions of the Commissioner of Education related to school budgets, the dissemination of information on proposed budgets to the public and contingent budgets are provided at the end of this publication **(See Appendix B)**.

## LEGAL NOTICES

It is the job of the District Clerk to give legal notice of the following:

- Budget hearing (date, time, place)
- Annual meeting/election & budget vote date (always third Tuesday of May), including hours polls will be open and locations of polling places
- When and where budget statement/document will be available
- BOE seats up for election, where to obtain nominating petitions and date for filing of petitions
- Where, how to obtain and file absentee ballots – Public inspection of list of recipients
- Voter registration information in districts using personal registration, including meetings of Board of Registration and public inspection of voter register
- Additional propositions, if any, to be considered by voters

All the above information is combined into 1 notice and must:

- ✓ Be advertised 4 times within 7 weeks with first legal notice occurring at least 45 days before Annual Budget Vote
- ✓ Appear in 2 general circulation newspapers (if no such newspapers exist in the district, notice should be posted in at least 20 public places at least 45 days in advance of the Budget Vote)
- Budget revote
  - ✓ Publish notice once each week in the two weeks preceding the scheduled revote, with first publication at least 14 days prior to voting day

## **SED GUIDANCE ON SEPARATE PROPOSITIONS (SEE APPENDIX C)**

Chapter 97 of the Laws of 2011 allows separate propositions:

Nothing in this section shall preclude the trustee, trustees, or board of education of school district, in their discretion, from submitting additional items of expenditures to the voters for approval as separate propositions or the voters from submitting propositions pursuant to sections two thousand eight and two thousand thirty-five of this part; provided however, except in the case of a proposition submitted for any expenditure contained within subparagraphs (i) through (iv) of paragraph i of subdivision two of this section, if any proposition, or propositions collectively that are subject to a vote on the same date, would require an expenditure of money that would require a tax levy and would result in the tax levy limit being exceeded for the corresponding school year then such proposition shall be approved if sixty percent of the votes cast thereon are in the affirmative.

### **PETITIONS**

- Anyone wishing to submit a petition for a Board of Education candidate must do so at least 30 days before Annual Budget Vote (small cities at least 20 days before Annual Budget Vote).
- Anyone wishing to submit a petition for a proposition to be placed on the ballot must do so at least 30 days before Annual Budget Vote.

### **BOARD OF EDUCATION APPROVAL OF PROPOSED BUDGET**

- Board of Education should approve the proposed budget to be put before the voters in May in sufficient time to allow for the preparation, Board approval and timely submission of the required Property Tax Report Card to SED.
- Approve proposed budget 25 days before annual budget vote or last business day before the day the Property Tax Report Card must be submitted to SED. The 25<sup>th</sup> day is always a Friday in April. (See below).

### **PROPERTY TAX REPORT CARD**

Property Tax Report Card is due by COB of the next business day after approval by trustees, but no later than Monday, April 25, 2016. Statute indicates it must be submitted no later than 24 days before the budget vote which always falls on a Saturday and is April 23rd in 2016. SED allows school districts to submit the Tax Report through the close of the next business day which is April 25, 2016.

Important Note: Chapter 97 of the Laws of 2011 requires school districts to report data elements necessary to calculate a Property Tax Levy Limit and amends requirements concerning reporting elements on the Property Tax Report Card. Required reporting elements from the tax levy limit calculation include:

- tax levy limit (without including the levy for permissible exclusions from the tax levy limit)
- permissible exclusions from the tax levy limit
- proposed tax levy (not including the levy for permissible exclusions from the tax levy limit), and
- total proposed tax levy (including any proposed levy above the tax levy limit and the levy for permissible exclusions from the tax levy limit).

Each of these elements is discussed in greater detail below.

Please see [Educational Management Services](#) for additional guidance.

Subdivision 7 of Section 1608 and Sections 1716(7), and 2601-a (3) of the Education Law require

Each year, commencing with the proposed budget for the two thousand-two thousand one school year, the trustee or board of trustees shall prepare a property tax report card, pursuant to regulations of the commissioner, and shall make it publicly available by transmitting it to local newspapers of general circulation, appending it to copies of the proposed budget made publicly available as required by law, making it available for distribution at the annual meeting, and otherwise disseminating it as required by the commissioner. Such report card shall include:

- the amount of total spending and total estimated school tax levy that would result from adoption of the proposed budget and the percentage increase or decrease in total spending and total school tax levy from the school district budget for the preceding school year, and
- the district's tax levy limit determined pursuant to section two thousand twenty-three-a of this title, and the estimated school tax levy, excluding any levy necessary to support the expenditures pursuant to subparagraphs (i) through (iv) of paragraph i of subdivision two of section two thousand twenty-three-a of this title, that would result from adoption of the proposed budget; and
- the projected enrollment growth for the school year for which the budget is prepared, and the percentage change in enrollment from the previous year; and
- the percentage increase in the consumer price index, from January first of the prior school year to January first of the current school year. A copy of the property tax report card prepared for the annual district meeting shall be submitted to the department in the manner prescribed by the department by the end of the business day next following approval of the report card by the trustee or board of trustees, but no later than twenty-four days prior to the statewide uniform voting day. The department shall compile such data for all school districts whose budgets are subject to the vote of the qualified voters and shall make such compilation available electronically at least ten days prior to the statewide uniform voting day.
- the estimated amount of the assigned appropriated fund balance, the restricted (reserved) fund balance, and the unrestricted (retained unreserved, unappropriated) fund balance and its percentage of the total proposed budget, and the actual amount and percentage of the unrestricted (unappropriated, unreserved) fund balance retained in the previous year.

## Data Elements on the Property Tax Report Card

### **TOTAL BUDGETED AMOUNT, NOT INCLUDING SEPARATE PROPOSITIONS:**

The amount of total spending included in the budget, as defined in Section 1608 of the education law, as amended by section 111 of chapter 474 of the laws of 1996 and the closing paragraph as added by section 157 of chapter 474 of the laws of 1996. Such amount shall not include any separate propositions.

### **PROPOSED TAX LEVY TO SUPPORT THE TOTAL BUDGETED AMOUNT, NET OF RESERVE:**

Represents the levy necessary to support General Fund expenditures. Include any prior year reserve for excess tax levy, including interest. As shown on the Office of the State Comptroller Real Property Tax Calculation Form as:

- **2016 Proposed Levy, Net of Reserve**

For 2015-16, report the actual levy for school purposes authorized by the trustee, board of trustees or board of education.

### **TAX LEVY TO SUPPORT LIBRARY DEBT, IF APPLICABLE:**

District must enter this amount, if applicable.

### **TAX LEVY FOR NON-EXCLUDABLE PROPOSITIONS, IF APPLICABLE:**

Tax Levy associated with educational or transportation services propositions are not eligible for exclusion and may affect voter approval requirements.

### **TOTAL TAX CAP RESERVE AMOUNT USED TO REDUCE CURRENT YEAR LEVY, IF APPLICABLE:**

District must enter this excess reserve amount, including accrued interest, if applicable. As shown on the Office of the State Comptroller Real Property Tax Calculation Form as:

- **Total Tax Cap Reserve Amount Used to Reduce 2017 Levy**

### **TOTAL PROPOSED SCHOOL YEAR TAX LEVY (A + B + C - D):**

The form will automatically calculate the sum of these items. It should also equal the sum of the two amounts calculated on the Office of the State Comptroller Real Property Tax Calculation shown as:

- **Total Tax Cap Reserve Amount Used to Reduce 2015 Levy, and**
- **2016 Proposed Levy, Net of Reserve**

For 2015-16, report the actual levy for school purposes authorized by the trustee, board of trustees or board of education.

The amount under Contingency Budget for the 2016-17 School Year **must** equal the 2015-16 Total School Year Tax Levy. If no budget is approved at the initial vote or upon re-vote, the Contingency Budget may not include a levy higher than the prior year's levy (0% levy



growth.)

## **PERMISSIBLE EXCLUSIONS TO THE SCHOOL TAX LEVY LIMIT:**

As calculated on the Office of the State Comptroller Real Property Tax Calculation Form and shown as:

- **Total Exclusions**

## **SCHOOL TAX LEVY LIMIT, EXCLUDING LEVY FOR PERMISSIBLE EXCLUSIONS:**

As calculated by the Office of the State Comptroller Real Property Tax Calculation Form and shown as:

- **Total Levy Limit Before Adjustments/Exclusions**

## **TOTAL PROPOSED SCHOOL YEAR TAX LEVY, EXCLUDING LEVY TO SUPPORT LIBRARY DEBT AND/OR LEVY FOR PERMISSIBLE EXCLUSIONS (E – B – F + D):**

The form will automatically calculate.

## **DIFFERENCE (G-H); NEGATIVE VALUE REQUIRES 60.0% VOTER APPROVAL:**

The form will automatically calculate the difference between the Tax Levy Limit, Excluding Levy for Permissible Exclusions (Line G) and the Total Proposed School Year Tax Levy, Excluding Levy to Support Library Debt and/or Levy for Permissible Exclusions (Line H.) If the proposed levy is higher than the tax levy limit, resulting in a negative remainder, the budget needs to be approved by 60 percent or more of the eligible voters at the time of the vote.

**Note:** Separate propositions for educational programs or additional transportation services are subject to the property tax limit and the tax levy associated with such propositions must be included on Line C when determining the level of voter approval necessary for approval of the budget and the separate propositions.

## **PUBLIC SCHOOL ENROLLMENT:**

Enrollment of pupils as defined in subparagraph two of paragraph n of subdivision one of section 3602 of the education law. Pursuant to section 2856 of the education law, resident charter school pupils also should be included in the enrollment reported on the property tax report card. Do not include enrollment of pupils in pre-Kindergarten.

"Public school district enrollment" shall mean the sum of the number of children:

- on a regular enrollment register of a public school district on the date which enrollment for BEDS purposes is taken;
- eligible to receive home instruction in the school district on such date;
- for whom equivalent attendance must be computed pursuant to this subdivision on such date;

- with handicapping conditions who are residents of such district who are registered on such date to attend programs under the provisions of paragraph c of subdivision two of section forty-four hundred one of this chapter;
- eligible to receive educational services on such date but not claimed for aid pursuant to subdivision seven of section thirty-two hundred two of this chapter; and
- registered on such date to attend programs
- pursuant to subdivision two of section three hundred fifty-five of this chapter, or
- pursuant to an agreement between the city school district of the city of New York and Hunter College pursuant to section sixty-two hundred sixteen of this chapter.

## **FUND BALANCES:**

For the 2016-17 Property Tax Report Card, report actual 2015-16 balances based upon the June 30, 2015 ending fund balance and estimated June 30, 2016 balances for the proposed 2016-17 budget year, as approved by the Board of Education.

### **Actual fund balances reported for 2015-16 are determined as follows:**

Adjusted Restricted Fund Balance: Final June 30, 2015 amount, as reduced or increased, if applicable, after the adoption by the Board of Education of the estimated balance on the 2015-16 Property Tax Report Card.

Assigned Appropriated Fund Balance: The actual amount listed on the tax warrant (August 2015).

Adjusted Unrestricted Fund Balance: The final amount retained as of June 30, 2015.

**Estimated fund balances** reported for 2016-17 are as of the time of School Budget and Property Tax Report Card preparation:

Adjusted Restricted Fund Balance: The estimated June 30, 2016 final balance, which will be the 2016-17 school year beginning balance.

Assigned Appropriated Fund Balance: the amount estimated for subsequent school years' taxes.

Adjusted Unrestricted Fund Balance: The estimated final amount to be retained as of June 30, 2016. This is the fund balance amount that is limited by law to no more than 4% of the estimated total 2016-17 budget; however, during the year it may be used to increase reserves or be appropriated for unanticipated ordinary contingent expenses.

## 2016 PROPERTY TAX REPORT CARD AND SCHOOL DISTRICT BUDGET NOTICE - ADDITIONAL GUIDANCE

To assist districts with completion of their Property Tax Report Card (PTRC) and School District Budget Notice, the following are line-by-line hints and guidance. The Property Tax Cap amounts for each district in the Open Book section of the State Comptroller's website (sample district attached) and referred to in this document should match the district's Tax Cap Summary. Districts may also wish to refer to additional guidance and instructions provided by the Office of the State Comptroller and the NYS Education Department.

**\*NOTE: Line entries A – I are the same for both the PTRC and School District Budget Notice\***

*Line A – Total Proposed Tax Levy to Support the Total Budgeted Amount Net of Reserve:* See attached Open Book screen shot, sum of "Reserve Amount Used to Reduce Current Year Levy" plus "Proposed Levy for Current Year, net of Reserve", identified with "LINE A" bracket. This amount should not include tax levy raised for library debt.

*Line B- Levy to Support Library Debt, if Applicable :* If the school district budget includes debt service for a library building and the school district levy must be raised to pay such debt, then enter amount of levy raised for this purpose. This line would be 0 where there is an agreement for the library to pay over to the district the amount of the annual debt payment and as such, the district is not levying taxes for such debt. Do not report here taxes simply collected by the school district on the library's behalf.

*Line C – Levy for Non-Excludable Propositions, if Applicable:* Include levy amount required for propositions for additional transportation services or educational programs. Additional transportation services include changing distance eligibilities for students to be provided transportation. It does not include the purchase of school buses. Educational programs include programs and activities not included in the budget proposition, i.e. athletics or music.

*Line D – Total Tax Cap Reserve Amount Used to Reduce Current Year Levy:* See attached Open Book screen shot, "Reserve Amount Used to Reduce Current Year Levy", identified with "LINE D" arrow. This is not the same as carryover.

*Line E – Total Proposed School Year Tax Levy (A+B+C-D)*

*Line F – Permissible Exclusions to the School Tax Levy Limit:* See attached Open Book screen shot, “Total Exclusions”, identified with “Line F” arrow. This would include all applicable exclusions for 2015-16 and 2016-17.

*Line G – School Tax Levy Limit, Excluding Levy for Permissible Exclusions:* See attached Open Book screen shot, “Total Levy Limit before Exclusions”, identified with “LINE G” arrow.

*Line H – Total Proposed Tax Levy for School Purposes, Excluding Permissible Exclusions and Levy for Library Debt, Plus Prior Year Tax Cap Reserve (E-B-F+D):* Proposed levy adjusted for exclusions, library debt and prior year tax cap reserve (as applicable).

**\* Line G and Line H are before, or without, coming year exclusions \***

*Line I – Difference: (G-H); (Negative Value Requires 60% Voter Approval – See Note below Regarding Separate Propositions):* This is the difference between line G and Line H. A negative value indicates that the district is proposing a budget requiring a levy that is greater than the calculated “cap” and would require a supermajority (60% voter approval). A difference of 0 would imply a tax levy that is equal to the cap. A positive difference indicates a proposed levy less than the cap. A 0 difference or a positive difference would require voter approval of 50% + 1.

# PROPERTY TAX REPORT CARD REPORTING FORM

## 2016-17 Property Tax Report Card

000000 - DISTRICT NAME			
Contact Person:	Budgeted 2015-16 (A)	Proposed Budget 2016-17 (B)	Percent Change (C)
Telephone Number:			
Total Budgeted Amount, not Including Separate Propositions			%
A. Proposed Tax Levy to Support the Total Budgeted Amount, Net of Reserve <sup>1</sup>			
B. Tax Levy to Support Library Debt, if Applicable			
C. Tax Levy for Non-Excludable Propositions, if Applicable <sup>2</sup>			
D. Total Tax Cap Reserve Amount Used to Reduce Current Year Levy, if Applicable			
E. Total Proposed School Year Tax Levy (A + B + C - D)			%
F. Permissible Exclusions to the School Tax Levy Limit			
G. School Tax Levy Limit, <u>Excluding</u> Levy for Permissible Exclusions <sup>3</sup>			
H. Total Proposed School Year Tax Levy, <u>Excluding</u> Levy to Support Library Debt and/or Permissible Exclusions (E - B - F + D)			
I. Difference: (G - H); (negative value requires 60.0% voter approval) <sup>2</sup>			
Public School Enrollment			%
Consumer Price Index			0.12%

<sup>1</sup> Exclude any prior year reserve for excess tax levy, including interest.

<sup>2</sup> Tax levy associated with educational or transportation services propositions are not eligible for exclusion under the School Tax Levy Limit and may affect voter approval requirements.

<sup>3</sup> For 2016-17, includes any carryover from 2015-16 and excludes any tax levy for library debt or prior year reserve for excess tax levy, including interest.

	Actual 2015-16 (D)	Estimated 2016-17 (E)
Adjusted Restricted Fund Balance		
Assigned Appropriated Fund Balance		
Adjusted Unrestricted Fund Balance		
Adjusted Unrestricted Fund Balance as a Percent of the Total Budget	%	%

## **ABSENTEE BALLOTS**

- District Clerk must mail an absentee ballot to every qualified voter who requests one not earlier than 30 days or later than 7 days before the Annual Budget Vote/Election Day.
- District Clerk must maintain a list of the names of all individuals provided with absentee ballots and the list is subject to public inspection and legal challenge until the Annual Budget Vote/Election Day.

## **SALARY DISCLOSURE REQUIREMENTS**

- Districts must use the State Aid Management System (SAMS) to prepare the Administrative Compensation Information Form. Access SAMS from the State Aid webpage at <https://www.stateaid.nysed.gov>. The Administrative Compensation Information Form is to be attached to the Budget Statement. The Budget Statement and required attachments are to be made available to the public at least 7 days before the Budget Hearing date and not less than 14 days before the Annual Budget Vote (April 26 – May 3, 2016). The Administrative Compensation Information Form is to be certified and submitted to SED in SAMS within 5 days of its preparation. The last day to revise the form in SAMS is May 9, 2016.  
Note: If additional employees are to be added after a Disclosure Notice has already been sent, only add the additional information. Do not resend the previously submitted information again.
- Each district must report separately the salary, annualized cost of fringe benefits and any in-kind or other compensation to be paid to the superintendent, each deputy, associate and assistant superintendent, and anyone with “Superintendent” in their title for the upcoming year.
- Also report the annual salary for the upcoming school year of any other administrator or supervisor earning an annual salary (not including fringe benefits, any in-kind or other compensation) equal to or greater than the amount specified by the Commissioner of Education (\$130,000).
- Instructions for the completion of the Administrative Compensation Information Form and the form are found on pages 12-15.

## **Instructions**

### **2016-17 Administrative Compensation Information Form**

#### **(State Aid Claim Year 2015-16)**

Chapter 474 of the Laws of 1996 required that the State Education Department prepare a statewide compilation of the salaries and other personnel costs of certain school administrators and make it available to all interested parties. Listed here are data, provided by school districts, of the salaries, employee benefits and other forms of remuneration for superintendents of schools (Type 1), deputy, assistant or associate superintendents (Type 2) and any other certified school administrators or supervisors (Type 3) who are budgeted to be paid at or above a certain level (estimated to be \$130,000 for 2016-17). This listing refers to information budgeted in May 2016 and expected to be paid in 2016-17) and applies to a particular position in a school district, not necessarily a particular individual. In order to fully understand the meaning of the data, clarification from individual districts may be necessary.

Caveats are in order in interpreting this data. The data is self-reported, un-audited and does not necessarily represent the whole State as there are districts that are not required to report the data. In addition, some districts may not use certain titles.

Three categories of remuneration are presented here. Taken together, they represent the total compensation provided for a particular position. The definition of each category is adapted from OMB circular A87, Cost Principles for State, Local and Indian Tribal Governments. The definitions are:

**Salaries:** The wages budgeted on an annual basis for the position. Include the positions of Superintendents (at any level) and deputy, assistant or associate superintendents and any other certified school administrators or supervisors who are budgeted to be paid at or above \$130,000 in 2016-17.

**Fringe:** Fringe benefits are allowances and services provided by employers as compensation in addition to regular salaries and wages. The cost of fringe benefits includes employer contributions for social security, employee life, health, unemployment and worker's compensation insurance, pension plan costs and other similar benefits allowable under established written policies. If a figure is provided under Salaries, this item may not be \$0.

**Other:** The annualized monetary value of any and all forms of compensation not included under Salaries or Fringe. Examples include (but are not limited to) employer expenses for

additional insurance and/or annuities, housing allowance, moving allowance, the personal use of a vehicle and/or residence, professional organization membership fees or dues, and other expenses. This item might be \$0, if the total compensation for a position was included in Salaries and Fringe above.

The form for submitting your administrative salary disclosure remains the same as last year. The form will allow you to enter some or all of your salaries in one session, log out and return at another time and continue entering more salaries or editing those that have already been entered. You may view, enter, edit, and print what you have entered at any time up until the deadline date of Monday, May 9, 2016. At COB on that date, the data will be frozen, and will be considered your final submission.

If you have any questions about the 2016-17 Budgeted Administrative Salary Disclosure form please contact the Office of Management Services at (518) 402-5286.

## Instructions

1. You must enter a salary and employee benefit value in the Superintendent line. It cannot be blank.
2. Enter information for the following titles regardless of salary level:
  - Superintendent
  - Assistant Superintendent
  - Associate Superintendent
  - Deputy Superintendent
  - Any title containing the word "Superintendent"

For each position, complete the following data fields - an entry is required:

- Title
  - Salary (e.g. 135000) please enter whole dollars only - do not use \$, comma, or period
  - Employee Benefits (e.g. 65000)
  - Other Remuneration (if greater than \$ 0)
3. Enter information for Other Supervisory or Administrative positions if the salary exceeds \$130,000. For each position, complete the following data fields - an entry is required:
    - Title
    - Salary
  4. Press the Save button to save your data.
  5. Open and run the Administrative Compensation Information Edit Exception Report to check your data.
  6. When you have completed entering and saving data, press the **Save & Ready** button to change the status of the form to **Ready**.
  7. Open the **Administrative Compensation Information - Certification** and press **Certify & Submit**.



# Administrative Compensation Information Form

## School Administrator Salary Disclosure Form

Form Due May 11, 2015

2015-2016 Salary Threshold = \$130,000

In response to legislative efforts to encourage greater cost sharing in service provision and local government administration, we now provide a section for districts that share administrative staff to highlight these efforts for the upcoming school year. Each sharing district should identify in the form the other district(s) with which they will be sharing administrative staff for school year 2015-2016.

If you will be sharing a Superintendent, list the other district (or districts) in the text box. If you will be sharing other administrative staff required to be reported, please send an email to [EMSCMGTS@nysed.gov](mailto:EMSCMGTS@nysed.gov) indicating the title of the staff persons(s) as well as the other district(s) involved in the cost-sharing.

The salaries, benefits and other compensation reported in the form should reflect only the financial support or commitment that your district will be making. They should not reflect the total amounts budgeted to be paid by all participating districts over the school year.

Report Estimated Salaries in the Budget for the 2015-2016 School Year

Sections 1608 and 1716 of the Education Law  
(Please read the instructions and definitions before completing this form.)

Title	Salary	Employee Benefits	Other Remuneration
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1.

Please list the district or districts with which you will be sharing a superintendent (if applicable):

Associate, Assistant and Deputy Superintendents  
(Example Titles: Associate Superintendent for Instruction, Deputy Superintendent, Assistant Superintendent for Business, etc.)

2.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
3.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
4.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
5.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
6.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
7.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
8.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
9.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
10.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
11.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
12.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
13.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
14.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
15.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
16.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
17.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
18.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
19.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
20.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
21.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
22.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
23.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
24.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
25.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
26.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
27.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
28.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
29.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
30.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
31.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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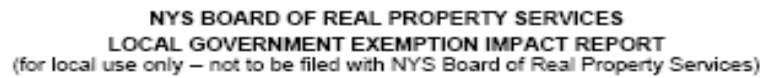
Other Supervisory and Administrative Employees Scheduled to Receive \$130,000 or More in Salary

71.	<input type="text"/>	<input type="text"/>
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## **BUDGET STATEMENT AND REQUIRED ATTACHMENTS**

- The Budget Statement and required attachments must be made available to the public (upon request) at each school building in the district, the district office, any public or free association library located within the district and on the school district's internet website, if one exists at least 7 days before the Budget Hearing date and not less than 14 days before the Annual Budget Vote.
- Required documents include:
  1. Budget Statement – proposed budget in three-part format separated into three components (administration, program and capital), prepared in plain language similar in detail to ST-3 and SBM-1.
  2. Property Tax Report Card – See pages 6-13.
  3. School Academic Report Cards – most recent school academic report cards outlining student performance
  4. District's Fiscal Accountability Summary – sent to Superintendent by SED Information and Reporting Services
  5. Salary Disclosure Requirements – See pages 14-17.
  6. Exemption Reporting for Taxing Jurisdictions - Chapter 258 of the Laws of 2008 added Section 495 to the Real Property Tax Law requiring counties, cities, towns, villages and school districts to attach to their tentative/preliminary budgets an exemption report.

Note: A chart aligning school district account codes to the administrative, programmatic and capital components of the three-part budget format follows on page 25.



Date: \_\_\_\_\_

**Taxing Jurisdiction:** \_\_\_\_\_

Fiscal Year Beginning: \_\_\_\_\_

[illegible]

Amount, if any, attributed to payments in lieu of taxes: \$ \_\_\_\_\_  
(details contained on RP-495-PILOT)

## SCHOOL DISTRICT BUDGETS: ALIGNMENT OF ACCOUNT CODES TO THREE-PART BUDGET FORMAT

<b>FUNCTION OR ACCOUNT</b>	<b>SBM CODE</b>	<b>TOTAL</b>	<b>ADMIN.</b>	<b>PROGRAM</b>	<b>CAPITAL</b>
Board of Education	1099.0		<b>X</b>		
Central Admin	1240.0		<b>X</b>		
Finance	1399.0		<b>X</b>		
Legal Services	1420.0		<b>X</b>	<b>X</b>	
Personnel	1430.0		<b>X</b>		
Records Mgmt.	1460.0		<b>X</b>		
Public Information	1480.0		<b>X</b>		
Op. Of Plant	1620.0				<b>X</b>
Maint. Of Plant	1621.0				<b>X</b>
Other Cent. Serv.	1699.0		<b>X</b>		
Judgments & Cl.	1930.4				<b>X</b>
Refund of Taxes	1964.4				<b>X</b>
Other Spec. Items	1998.0		<b>X</b>		
Curr. Dev. & Sup.	2010.0		<b>X</b>		
Sup. Reg. Schl.	2020.0		<b>X</b>		
Sup. Spec. Schl.	2040.0		<b>X</b>		
Rsch. Eval. & Plan.	2060.0		<b>X</b>		
Instruction (Net of supervision/rsch.)	2999.0			<b>X</b>	
Purchase of Buses	5510.21				<b>X</b>
Other Dist. Trans.	5510.0			<b>X</b>	
Garage Bldg.	5530.0			<b>X</b>	
Contract Trans.	5540.4			<b>X</b>	
Public Trans.	5550.4			<b>X</b>	
BOCES Trans.	5581.49			<b>X</b>	
Community Service	8099.0			<b>X</b>	
Employee Benefits	9098.0		<b>X</b>	<b>X</b>	<b>X</b>
Debt Service	9898.0				<b>X</b>
Transfer to Capital	9950.9				<b>X</b>
Transfer to Debt	9901.96				<b>X</b>
Other Transfers	9951.0			<b>X</b>	

Source: Budgeting Handbook 3, Appendix H, New York State Education Department, Bureau of Educational Management Services

## BUDGET HEARING

- Budget Hearing must be held not earlier than 14 days and not later than 7 days before the Annual Budget Vote.
- Budget Statement and required attachments (see above) must be made available to the public at the hearing.
- The budget must be presented at the hearing in plain language and in 3 components: Administrative, Program and Capital.

## BUDGET NOTICE

- School District Budget Notice, available on SED's Management Services website at <http://www.p12.nysed.gov/mgtserv/districtbudgetdata.html> must be mailed to district residents after the Budget Hearing, but not later than 6 days prior to the Annual Budget Vote, or not later than 6 days prior to special district meeting called for a second budget vote (if budget is defeated on first vote).

**Note:** School district officials can look up the maximum savings for property with a Basic STAR Exemption by going to the following web page [http://www.tax.ny.gov/pit/property/star/max\\_index.htm](http://www.tax.ny.gov/pit/property/star/max_index.htm). For school districts comprised of multiple municipalities (towns, cities, villages etc.) report the basic STAR saving amount for the dominant municipality, which is the one that comprises the largest share of the school district's tax base.

## School District Budget Notice

Overall Budget Proposal	Budget Adopted for the 2015-16 School Year	Budget Proposed for the 2016-17 School Year	Contingency Budget for the 2016-17 School Year *												
Total Budgeted Amount, Not Including Separate Propositions	\$	\$	\$												
Increase/Decrease for the 2016-17 School Year		\$	\$												
Percentage Increase/Decrease in Proposed Budget		%	%												
Change in the Consumer Price Index		0.12 %													
A. Proposed Levy to Support the Total Budgeted Amount, Net of Reserve															
B. Levy to Support Library Debt, if Applicable															
C. Levy for Non-Excludable Propositions, if Applicable **															
D. Total Tax Cap Reserve Amount Used to Reduce Current Year Levy															
E. Total Proposed School Year Tax Levy (A + B + C - D)															
F. Total Permissible Exclusions	\$	\$													
G. School Tax Levy Limit, <u>Excluding</u> Levy for Permissible Exclusions	\$	\$													
H. Total Proposed School Year Tax Levy, <u>Excluding</u> Levy to Support Library Debt and/or Permissible Exclusions (E – B – F + D)	\$	\$													
I. Difference: G – H (Negative Value Requires 60.0% Voter Approval – See Note Below Regarding Separate Propositions) **	\$	\$													
Administrative Component	\$	\$	\$												
Program Component	\$	\$	\$												
Capital Component	\$	\$	\$												
<p>* Provide a statement of assumptions made in projecting a contingency budget for the 2016-17 school year, should the proposed budget be defeated pursuant to Section 2023 of the Education Law.</p>															
<div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 35%;"> <p>** List Separate Propositions that are not included in the Total Budgeted Amount: (Tax Levy associated with educational or transportation services propositions are not eligible for exclusion and may affect voter approval requirements)</p> </div> <table border="1" style="width: 60%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Description</th> <th style="text-align: center;">Amount</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table> </div>				Description	Amount										
Description	Amount														

## ANNUAL ELECTION AND BUDGET VOTE/ANNUAL MEETING

- Held statewide the 3<sup>rd</sup> Tuesday in May to fill seats on the Board of Education and vote on proposed budget.

### THRESHOLD FOR BUDGET APPROVAL

- Propose a budget requiring a total tax levy at or below the calculated maximum allowable levy\*
  - Requires a simple majority (50% + 1 voter approval)
- Propose a budget requiring a total tax levy above the calculated maximum allowable levy
  - Requires a super majority (60% voter approval)
  - Requires a statement on ballot indicating the required tax levy before exclusions exceeds the Tax Levy Limit

In such a proposal, the ballot shall include the following substantially similar statement:

*“Adoption of the budget requires a tax levy increase of \_\_\_\_ which exceeds the statutory tax levy increase limit of \_\_\_\_ for this school fiscal year and therefore exceeds the state tax cap and must be approved by sixty percent of the qualified voters present and voting.”*

\*Maximum allowable levy = calculated tax levy limit + coming year exclusions

### BUDGET PASSED OR DEFEATED?

- If proposed budget passes, enact budget effective July 1.
- If proposed budget is defeated, district may do one of the following:
  - Resubmit the defeated budget allowing enough time for legal notices
  - Submit a revised budget allowing enough time for legal notices
  - Adopt a contingent budget (see below)
- If the resubmitted or revised budget is defeated, the BOE **must** adopt a contingent budget (see below).
- Uniform Statewide Budget Revote Date- 3<sup>rd</sup> Tuesday in June

## CONTINGENT BUDGET

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In the event voters reject a district's proposed budget twice, the Board of Education **must** enact a Contingent Budget consisting of "teachers' salaries and ordinary contingent expenses" subject to a cap on the administrative portion of the budget, with no increase in tax levy over the prior year.

### STRUCTURE OF CONTINGENT BUDGET

- Includes teachers' salaries and ordinary contingent expenses.
  - ✓ Teachers include professional educator positions certified by the State Education Department including teachers, teacher assistants, administrators and various professional specialists in the area of pupil personnel services.

Ordinary contingent expenses are those necessary to provide the minimum services legally required to:

- ✓ Operate and maintain school buildings and the educational program;
- ✓ Preserve the property of the district; and
- ✓ Ensure the health and safety of students and staff.
- The Board of Education determines which appropriations constitute ordinary contingent expenses.

\* Additional information on contingent budgets can be found in Appendix E

### CONTINGENT BUDGET ADMINISTRATIVE CAP

The **administrative component** of a contingency budget must not exceed the lesser of the percent the administrative component comprised in the prior year's budget (exclusive of the capital component) or the percent the administrative component comprised in the last defeated budget (exclusive of the capital component).

- The percent of the administrative component equals the sum total of the appropriations comprising the administrative component divided by the sum total of the appropriations comprising the administrative and programmatic components of the budget. The capital component is excluded from this calculation.



### SAMPLE ADMINISTRATIVE CAP CALCULATION

	2015-16 Adopted <u>Budget</u>	2016-17 Proposed <u>Budget</u>
Administrative Component	\$100,000	\$125,000
Program Component	\$700,000	\$1,000,000
Capital Component	\$200,000	\$225,000

Administrative % for 2015-16 Adopted Budget =

$$\frac{2015-16 \text{ Administrative Component}}{2015-16 \text{ Administrative Component} + 2015-16 \text{ Program Component}} =$$
$$\frac{\$100,000}{\$100,000 + 700,000} = 12.50\%$$

Administrative % for 2016-17 Proposed Budget =

$$\frac{2016-17 \text{ Administrative Component (Proposed Budget)}}{2016-17 \text{ Administrative Component} + 2016-17 \text{ Program Component (Proposed)}} =$$
$$\frac{\$125,000}{\$125,000 + 1,000,000} = 11.11\%$$

If, in this example, the proposed budget was defeated and the district decided to immediately adopt a contingent budget, then the administrative component of that contingent budget could not be greater than 11.11%. If, as allowed by law, the district did hold a budget revote and the budget proposed again was defeated, then the administrative cap of the contingent budget could not be greater than the lesser of the 2015-16 adopted budget administrative cap or the administrative cap of the budget that was proposed in the June 2016 revote.

## CONTINGENT BUDGET FACT SHEET

- With the establishment of the Property Tax Cap in July 2011, the spending cap on contingent budgets was **removed**. This means district expenditures are **NO** longer restricted to the contingent budget cap (4% or 120% of CPI).
- Instead, the tax levy can be no greater than the prior year actual tax levy. No increase in the tax levy is allowed.
- School districts must adhere to the contingent budget administrative cap:

The lesser of:

The % of the administrative component in the 2015-16 budget (exclusive of capital)

**OR**

The % of the administrative component in the last defeated budget proposed for the 2016-17 school year (exclusive of capital)

- All non-contingent items of expenditure must be removed from a contingency budget
  - Determining which items fall under "ordinary contingent expenses" rests with the board of education
  - Examples of **non-contingent expenses** include (but are not limited to):
    - Capital construction projects (transfer to capital fund), most equipment, certain student supplies, school bus purchases, new multi-year school bus and building leases, other new multi-year contractual arrangements, rental of office equipment, salary increases for management confidential employees and any civil service employees not covered by a collective bargaining agreement with a recognized bargaining unit – teachers, administrators, superintendent and other positions requiring SED certification, district clerk, district treasurer and internal claims auditor may receive salary increases
- Ordinary contingent expenses may also have to be reduced to ensure there is no tax levy increase
  - Ordinary contingent expenses are those necessary to provide the minimum services legally required to:
    - Operate & maintain school buildings & the educational program.
    - Preserve the property of the district; and
    - Ensure the health & safety of students and staff
    - Examples of **ordinary contingent expenses** include (but are not limited to): Interscholastic athletics, extracurricular activities, field trips as well as related transportation, transportation per mileage limits

previously approved by the voters, Pre-existing contractual obligations (no NEW contracts), General Fund support for school food services

- **Note:** Hardware Aid received while operating under a contingent budget may be used to purchase computer equipment, even though equipment is not an ordinary contingent expense.
- Following adoption of a contingent budget, BOE may increase/add appropriations:
  - For additional unanticipated ordinary contingent expenses **only** as long as the district still adheres to the contingent budget administrative cap and there is no resulting increase in the tax levy.
  - Additional appropriations would have to be funded by unanticipated increase in revenue and/or the appropriation of available fund balance.
  - To provide for the expenditure of additional gifts, grants in aid, and insurance proceeds not already budgeted (See §1718(2) of Education Law).
  - NOTE: BOE must always identify and appropriate revenue sufficient to cover any increases in appropriations.
- Part 170.2 (l) of Commissioner's Regulations permits transfers between and among contingent budget codes.
- Non-contingent budget codes may never be increased, but they may be decreased.
- Under a contingent budget, **transfers may not** be made that cause the limitation on the contingent budget administrative cap to be exceeded.

## **CONTINGENT BUDGETS AND BOCES CAPITAL PROJECT EXPENSES (SEE APPENDIX D)**

SED advises that all expenses related to BOCES capital projects charged to school districts **are** to be included in the **administrative** component and **not** in the **capital** component of school district three-part budgets.

### **MODIFICATION/AMENDMENT OF A CONTINGENT BUDGET**

- Following the adoption of a contingent budget the Board of Education may increase or add appropriations:
  - ✓ For additional ordinary contingent expenses **only if** such expenses can be accommodated within the limits of the administrative cap
  - ✓ To provide for the expenditure of additional gifts, grants in aid, and insurance proceeds not already budgeted.

**Note:** The board of education must always identify and appropriate sufficient revenue to support any increases in appropriations, but is prohibited from approving a tax levy greater than the prior year levy when operating under a contingency budget.

### **BUDGET TRANSFERS UNDER A CONTINGENT BUDGET**

- Part 170.2(l) of the Regulations of the Commissioner of Education permit budget transfers between and among contingent budget codes. However, under a contingent budget, transfers that would cause the limitations of the administrative budget cap to be exceeded are **not** permitted.

### **DETERMINATION OF ORDINARY CONTINGENT EXPENSES**

- Information on the determination of ordinary contingent expenses and Formal Opinion of the State Education Department Office of Counsel No. 213 (1967) related to contingent and non-contingent expenses follow on pages 28-31.

**Source:** **Budgeting Handbook 3, Appendices F and G**, New York State Education Department, Bureau of Educational Management Services.

**Note:** While operating under a contingent budget, school districts are allowed to spend an amount equal to the Instructional Computer Hardware and Technology Equipment Aid to be received that school year for computer equipment, even though equipment is not an ordinary contingent expense. The appropriations for this equipment must be accommodated within the constraints of the administrative cap imposed on contingent budgets.

## **BOARD OF EDUCATION RESPONSIBILITY FOR THE DETERMINATION OF ORDINARY CONTINGENT EXPENSES**

In all school districts of the state school budgets are determined by the qualified voters of the school district. In the event the voters reject a proposed budget, the board of education is empowered to levy a tax sufficient to defray the cost of those items specifically authorized by statute, and the cost of those items determined by the board to constitute "ordinary contingent expenses." In addition, Section 2023 of the Education Law places a computed dollar cap on the administrative component of the budget.

Therefore, even if the item is an ordinary contingent expense, the total amount of the administrative component may not exceed the cap set forth pursuant to the following formula:

The administration component of a contingent budget may not comprise a greater percentage of the contingency budget, exclusive of the capital component, than the lesser of: (1) that percentage in the prior year's budget; or (2) that percentage in the last defeated budget presented for the upcoming year.

After assuring that the administrative cap is adhered to, the board of education must follow some basic guidelines. The underlying rule is found in Education Law, Section 1718, which reads as follows:

"Section 1718. Limitation upon expenditures

1. No board of education shall incur a district liability in excess of the amount appropriated by a district meeting unless such board is specially authorized by law to incur such liability."

The exceptions from this basic rule are contained in Section 2023 and Section 2023-a of the Education Law, Levy of Tax for certain purposes without vote, which read as follows:

"1. If the qualified voters shall neglect or refuse to vote the sum estimated necessary for teachers' salaries, after applying thereto the public school moneys, and other moneys received or to be received for that purpose, or if they shall neglect or refuse to vote the sum estimated necessary for ordinary contingent expenses, including the purchase of library books and other instructional materials associated with a library and expenses incurred for interschool athletics, field trips and other extracurricular activities and the expenses for cafeteria or restaurant services, the sole trustee, board of trustees, or board of education shall adopt a contingency budget including such expenses and shall levy a tax, subject to the restrictions as set forth in subdivision four of this section and subdivision eight of section two thousand twenty-three-a."

Subdivision 4. "The contingency budget shall not result in a tax levy greater than the tax levied for the prior school year."

Subdivision 8. "Notwithstanding any other provision of law to the contrary, if the qualified voters fail to approve the proposed school district budget upon resubmission or upon a

determination not to resubmit for a second vote, the sole trustee, trustees or board of education shall levy a tax no greater than the tax that was levied for the prior school year."

2. Notwithstanding the defeat of a school budget, school districts shall continue to transport students for interscholastic athletics, field trips, and other extracurricular activities, and, to and from the regular school program in accordance with the mileage limitations previously adopted by the qualified voters of the school district. Such mileage limits shall change only when amended by a special proposition passed by a majority of the qualified voters of the district."

The reason for these provisions is found in the State Constitution which requires, as interpreted by the courts, that the schools of the state must be kept in operation at all times so that the youth of the state may have access to uninterrupted education.

The responsibility for determining which items in a school district budget fall under the concept of "ordinary contingent expenses" **rests with the board of education.**

Where individual citizens disagree with such a determination of a board of education, they are authorized to present the question to the Commissioner of Education who then pursuant to Section 2024 of the Education Law, determines the issue.

The purpose of this Appendix is to summarize the relevant statutory provisions and the general information contained in Formal Opinion of Counsel, No.213, dated July 6, 1967 (which replaces No.93, dated April 28, 1961). A copy of No.213 is attached. This opinion, in general terms, sets forth the rationale behind pertinent decisions of Commissioner of Education over the years and statutory provisions, as they affect the determination of the term "ordinary contingent expenses."

While it is not possible in this document to answer every question which may be raised concerning contingent budgets, it is hoped that it will help to clarify those questions most frequently asked.

## **OPTIONS OPEN TO THE BOARD OF EDUCATION**

There are several options open to a board when its budget is defeated, such as:

1. The board may prepare and adopt a contingent budget without going back to the voters.
2. The board may present only one additional revised budget at a special district meeting on the third Tuesday of June.
3. If the vote fails a second time, the board must adopt a contingent budget with no increase in the tax levy over the prior year's levy.

## MISCONCEPTIONS

Many misconceptions have arisen concerning defeated school budgets. The most common of these, together with comments about each, are as follows:

### Misconception No. 1

"The Commissioner of Education imposes a budget if the voters continue to turn the budget down." The Commissioner does not have this authority. **It is the responsibility of the board of education to adopt a contingent budget, if the voters refuse to pass the budget.**

### Misconception No. 2

"A special meeting must be called in the event of a defeated budget." This is at the discretion of the board of education, unless a petition for such a meeting is properly filed in accordance with Section 2008 of the Education Law.

## ORDINARY CONTINGENT EXPENSES

When a board of education is faced with adopting a contingent budget after the voters have refused or continued to refuse to approve the budget, the crucial question is the determination of what constitutes ordinary contingent expenses. In general, except for those items over which the statutes themselves either provide mandates for or give discretion to the board of education, these may be considered those expenditures deemed to be absolutely necessary to operate and maintain schools. The emphasis should be on those expenditures considered essential to maintain an educational program, preserve property, and assure the health and safety of students and staff. The board of education must exercise its best judgment in determining what those minimum expenditures shall be.

Formal Opinion of Counsel No.213 specifically discusses provisions for teachers' salaries as authorized by Section 1709, subdivision 16, of the Education Law. It also divides ordinary contingent expenses into three categories: (1) legal expense; (2) expenditures specifically authorized by statute; and (3) other items necessary to maintain the educational program, preserve property, and assure the health and safety of students and staff.

Examples are given in Opinion 213 of some expenditures which are not considered to be acceptable ordinary contingent expense items. In general, these may be defined as those items which are not required to maintain a minimum educational program, to preserve property, and to assure the health and safety of pupils and staff. Excluded are those expenditures which, by law, only the voters can authorize. An example of the latter is the purchase of new equipment.

There are certain items of expenditure which require a fuller explanation than was possible to give in Opinion 213. These are discussed below:



## **PUBLIC EMPLOYEES FAIR EMPLOYMENT ACT (TAYLOR LAW)**

Agreement entered into under the provisions of this Act must be honored by the board of education.

In the case of non-instructional employees, the board of education is still required to determine the number necessary under a contingent budget, as indicated in Opinion 213, page 5, item 4. If the salaries for the required number of these employees have been determined by agreements under the Public Employees Fair Employment Act, such salaries are an ordinary contingent expense.

## **TRANSPORTATION**

The cost of transportation for; (1) pupils to and from regular school programs in accordance with mileage limitations previously adopted by the qualified voters and, (2) interscholastic athletics, field trips and other extracurricular activities are ordinary contingent expenses. Mileage limits for pupils to and from regular school programs shall change only when amended by a special proposition passed by a majority of the qualified voters of the district. Transportation of nonpublic school pupils beyond the mileage limitation is an ordinary contingent expense up to fifteen miles. If transportation is provided to public school pupils attending public schools other than BOCES facilities within the district for distances in excess of fifteen miles, transportation for nonpublic school pupils attending nonpublic schools within the district is an ordinary contingent expense up to the maximum distance such public school pupils reside from the schools they legally attend and to which they are transported. If public school pupils are transported outside the district, under tuition contract, the rule is similar. (Education Law 305.14)

Shuttle service between public schools for instructional purposes is an ordinary contingent expense.

Transportation, pursuant to article 89, for all handicapped children living up to and including 50 miles is an ordinary contingent expense.

## **PUBLIC LIBRARY**

If no separate proposition to raise money for the public library had been included in the budget vote, or if the amount requested had been greater than that included in the prior year's budget, the same amount approved by the voters in the year prior to defeating the budget becomes an ordinary contingent expense.

Library tax levies are subject to the property tax cap. Library boards can vote to exceed the calculated tax levy limit and any budget they put forth for public vote would require a simple majority for passage. The following document prepared by the New York Library Association explains the impact of the new law on libraries:

[http://www.nyla.org/max/4DCGI/cms/review.html?Action=CMS\\_Document&DocID=26&Time=1061996134&MenuKey=nomenucms](http://www.nyla.org/max/4DCGI/cms/review.html?Action=CMS_Document&DocID=26&Time=1061996134&MenuKey=nomenucms)



## USE OF SCHOOL BUILDINGS AND GROUNDS BY OUTSIDE AGENCIES

If there is no identifiable expense to the taxpayers, or where such extra costs are paid in advance in full by donations, the board of education may grant the use by outside agencies of school buildings and grounds. This does not apply to public school activities.

## EQUIPMENT

The cost of equipment does not normally constitute an ordinary contingent expense, as indicated in item 14 on page 5 of Opinion 213. This is true regardless of whether the equipment is to be purchased, leased or lease-purchased in accordance with the provisions of Section 1725 of the Education Law. Where equipment is to be lease-purchased pursuant to Section 109-b of the General Municipal Law, a separate referendum is required.

## PUPIL SUPPLIES

When appropriations for free pupil supplies have not been approved by the voters, it becomes the responsibility of the parents or guardians to see that their children are provided with the items needed to attend upon instruction, as required by the Compulsory Education Law. The responsibility of the school district, on the other hand, is to determine what supplies are considered pupil supplies as contrasted to those which should be called teacher supplies.

Pupil supplies should be deemed to be those supplies that are essentially retained by the pupil such as writing pads, loose leaf binders, pencils, rulers, etc. and other supply items required by the pupil and which are readily available from sources other than the school district; all other supply items required by the educational program approved by the board of education but which are not readily available from sources other than the school district should be deemed to be teacher supplies and therefore a contingent expense.

The following is an illustrative list of supplies which may be deemed to be pupil supplies and which are readily available from sources other than the school district:

- ☐ writing pads
- ☐ lined composition paper, excluding wide lined primary paper
- ☐ typing paper
- ☐ carbon paper
- ☐ pencils, excluding primary pencils and special testing pencils
- ☐ Pens
- ☐ erasers
- ☐ rulers, yardsticks
- ☐ notebooks, but not workbooks which are considered textbooks
- ☐ gym shorts
- ☐ t-shirts
- ☐ Sneakers

- ☐ other personal athletic needs
- ☐ Compass
- ☐ Protractors
- ☐ crayons, excluding oversize primary crayons
- ☐ felt tipped pens
- ☐ paper clips
- ☐ rubber bands
- ☐ Mucilage
- ☐ index cards, 3 x 5, 5 x 8

Of primary concern in the determination of pupil supplies is that the list be a reasonable one and that the parent be granted the option of purchasing such items from sources other than the school.

In the event that the parent or guardian opts to purchase such supplies from a source other than the school, no charge may be imposed by the district.

The Commissioner in **Matter of Hasslacher** (Decision 9459) has determined that the school district need not afford parents the opportunity to make a piecemeal selection of items they may wish to purchase but may instead offer any or all supplies at a given total price.

## **BUDGET FORMAT**

The requirements as to budget format and availability of copies to voters applicable to budgets presented at the annual district meeting also apply to budget-related propositions for presentation at special meetings. Sections 1608, 1716 and 2601-a of the Education Law require that copies of proposed budgets be made available to residents during the seven days prior to the budget hearing (presentation) and fourteen days prior to the annual meeting/budget vote. This requirement also applies to budget proposals for presentation at special meetings.

# FORMAL OPINION OF COUNSEL NO. 213 (1967)

## THE UNIVERSITY OF THE STATE OF NEW YORK

### EDUCATION DEPARTMENT

July 6, 1967

#### FORMAL OPINION OF COUNSEL NO. 213

TO: City, Village and District Superintendents of Schools Supervising Principals

Since Formal Opinion of Counsel #93 (1961) with respect to the question of the powers of a board of education to levy taxes for certain purposes in the event the voters of a district have refused to approve a proposed budget, there have been changes in the statutes and a number of additional questions have arisen. The items listed in the earlier letter have been included in this one.

In this connection, section 2023 of the Education Law reads as follows:

"2023. Levy of Tax for certain purposes without vote. If the qualified voters shall neglect or refuse to vote the sum estimated necessary for teachers' salaries, after applying thereto the public school moneys, and other moneys received or to be received for that purpose, or if they shall neglect or refuse to vote the sum estimated necessary for ordinary contingent expenses, the sole trustee, board of trustees, or board of education shall levy a tax, subject to the restrictions as set forth in subdivision four of this section and subdivision eight of section two thousand twenty-three-a of this part. Both provisions of law provide that under a contingency budget the tax levy may not be greater than the prior year tax levy."

It is to be observed with regard to teachers' salaries that the board of education has an absolute discretion. Reference in this connection should be made to subdivision 16 of section 1709 of the Education Law, which is as follows:

'1709, subd. 16. To contract with and employ such persons as by the provisions of this chapter are qualified teachers, to determine the number of teachers to be employed in the several departments of instruction in said school, and at the time of such employment to make and deliver to each teacher a written contract as required by section three thousand eleven of this chapter, except as otherwise provided by sections three thousand twelve and three thousand thirteen; and employ such persons as may be necessary to supervise, organize, conduct and maintain athletic, playground and social center activities, or for any one or more of such purposes; and to adopt rules and regulations governing the excusing of absences of all teachers and other employees and for the granting of leaves of absence to such employees either with or without pay. The regular teachers of the school may be employed at an increased compensation or otherwise, and by separate agreement, written or oral, for one or more of such purposes.

Consequently, a board of education may determine for what purposes teachers are needed, how much they are to be paid and what the terms and conditions of employment are to be, including, of course, providing for leaves of absence. This applies whether such teachers are employed for regular school service, full or part-time, summer school, adult education or for special programs of any kind, such as the recently authorized driver education on Saturday (L. 1967, ch. 654).<sup>1</sup> In each of these cases there need only be a determination by the board of education that such services are necessary.

The question of what is an "ordinary contingent expense," however, tends to be more complicated. The following are ordinary contingent expenses:

#### I. Legal expenses

- A. Debt service-interest and principal
- B. Judgments
  - a. Courts
  - b. Orders of Commissioner of Education
- C. Other Legal obligations
  - a. Social Security and other payroll taxes and assessments
  - b. Preexisting contractual obligations.

#### II. Expenditures specifically authorized by statute

- A. Transportation \*
- B. Textbooks for grades K-12,\*\* including summer school (Educ. L., '701, subd 3, see Formal Opinion No, 181).
- C. Supplies for sale, rental or loan to pupils (Educ. L., '701, subd 5).
- D. Expenses in connection with membership in N.Y.S. School Boards Association, Inc. within this State (Educ. L., '1618).
- E. Convention and conference expenses (Gen. Mun. L., '77-b).

\*Maximum distance raised to 15 miles by Chapter 755 of the Laws of 1974. Now 50 miles for handicapped students since amendment by Chapter 853 of the Laws of 1976. The law has since been amended to include transportation for field trips, interscholastic athletics, co-curricular activities and transportation to and from regular school.

\*\* Section 701 was amended by Chapter 587 of the Laws of 1973 to include textbooks in grades K-12.

- F. Youth bureaus; recreation and youth service projects; and other youth programs (Exec. L., "422, 423; but not under Gen. Mun. L., "95, 244-b, which require authorization by voters) District's share of services provided by a Board of Cooperative Educational Services (Educ. L., '1958)
- G. Health services (Educ. L., '9Private, Federal or State donations not involving expenditure of local money (Educ. L., '1718, subd 2)
- H. Nursery school (Educ. L., '1712, subd 2)
- I. Accident insurance for pupils (Educ. L., '1709, subs 8-a, 8-b)
- J. In-service training for teachers (Educ. L., '1709, subd 32)

- K. Child Nutrition Programs\*\*\*
- L. Eye safety devices (Educ. L., '409-a)

\*\*\* Chapter 682 of the Laws of 2002 made budgetary appropriations to support the operation child nutrition programs (school lunch and breakfast programs) an ordinary contingent expense.

- III. Other items necessary to maintain the educational program, preserve property and assure the health and safety of students and staff. The following is a partial list of such items deemed to be included in this category as an ordinary contingent expense:
  - A. Necessary travel expenses of board members and employees on official business
  - B. Amount necessary to pay for necessary legal services
  - C. Instructional supplies for teachers' use (regardless of program) Necessary salaries for the necessary number of nonteaching employees. This not only applies to custodial and maintenance personnel, except cafeteria employees, but also to all other non-teachers such as the business manager and clerical personnel. Salary increases or increments may not be provided for these employees unless it is impossible to assure qualified personnel for the minimum service, in which case these employees may be paid necessary amounts.
  - D. Fuel
  - E. Water
  - F. Light and power
  - G. Telephone
  - H. Use of school buildings for the purpose of teachers' meetings and PTA meetings with school-connected purposes. These do not include pro-grams of entertainment or of a social nature
  - I. Emergency repairs of school plant
  - J. Maintenance of necessary sanitary facilities
  - K. Necessary expenditures for complying with Regulations of the Commissioner of Education pertaining to such items as fire alarm systems and fire escapes.
  - L. Temporary rental of essential classroom facilities
  - M. Expenses for capital outlay are not ordinary contingent expenses. However, certain expenses, such as for emergency repairs, or to equip a classroom or classrooms where essential to house additional students, would be deemed ordinary contingent expenses. This does not include replacement of equipment, however.
  - N. Required civil defense equipment
  - O. Materials used in classes by students where uniformity is essential to the program or to preserve health and safety (chemicals, etc.).
  - P. Newspapers and periodical subscriptions for libraries and classroom use where essential for instruction or to preserve continuity of sets.
  - Q. Options on land where the price of the option is nominal.
  - R. Expenditures necessary to advise district voters concerning school matters.
  - S. Preliminary plans and specifications needed to submit propositions to voters.

The following is a partial list of items **not** deemed to be an ordinary contingent expense:

- A. Fee for evaluation of school system by the Middle States Association of Colleges and Secondary Schools.
- B. Fees for surveying school system by various individuals, groups, or organizations.
- C. Rental of office equipment, computers, etc.
- D. Use of school buildings and grounds by outside organizations except where there is no identifiable extra cost to the district or such cost is fully paid by a donation before the activity occurs.
- E. Capital expenditures, except in an emergency
- F. \* Transportation and maintenance of interscholastic athletic teams
- G. \*\* New library books

\* Chapter 436 of the laws of 1997 defines costs related to interscholastic athletics, field trips and co-curricular activities as ordinary contingent expenses.

\*\*Chapter 775 of the laws of 1992 defines the purchase of library books as ordinary contingent expenses.

If a controversy arises as to the application of what is an ordinary contingent expense as far as some particular item is concerned, an appeal lies to the Commissioner of Education under section 310 of the Education Law. See section 2024 of the Education Law, which reads as follows:

**§2024. Reference to Commissioner of Education.**

If any question shall arise as to what are ordinary contingent expenses the same may be referred to the Commissioner of Education, by a statement in writing, signed by one or more of each of the opposing parties upon the question, and the decision of the commissioner shall be conclusive.

## **APPENDICES**

**APPENDIX A**

**SCHOOL BUDGET DEADLINES & ACTIONS**  
**BUDGET DEVELOPMENT CALENDAR**



## SCHOOL BUDGET DEADLINES AND ACTIONS

### May Budget Vote 2016

Deadline	Budgetary Action
March 1, 2016	Submit information to calculate Tax Levy Limit on Office of State Comptroller's website.
April 2, 2016	Legal notice of date, time, and place of School Budget Hearing and Annual Budget Vote. Must advertise 4 times within 7 weeks with the first legal notice publication occurring at least 45 days before the Annual Budget Vote. Notice should appear in 2 general circulation newspapers. If no such newspapers exist in the district, the notice should be posted in at least 20 public places at least 45 days in advance of the Budget Vote.
April 18, 2016 April 27, 2016	Submission of petitions for Board of Education candidates. Small cities have a deadline of 20 days prior to Budget Vote, April 27 <sup>th</sup> . All others have 30 days and may accept petitions through Monday, April 18 <sup>th</sup> .
April 18, 2016	Last day to submit petitions for propositions to be placed on the ballot.
April 22, 2016	Proposed 2016-17 budget approved by Board of Education.
April 25, 2016	Property Tax Report Card must be submitted to SED using the State Aid Management System (SAMS) by the end of the next business day following approval of the report card by the BOE but no later than 24 days prior to Budget Vote. Day 24 falls on Saturday 4/23. SED will accept submissions through Monday 4/25. The Report Card includes: total General Fund budget, percentage increase or decrease in total spending and tax levy from prior school year budget, total estimated school tax levy, enrollment growth and the percentage change in enrollment from the previous year, fund balance information (actual and projected), the percentage increase in the Consumer Price Index and the Tax Levy Limit excluding allowable expenditures for exemptions.
	Property Tax Report Card must be transmitted to local newspapers of general circulation.
Up Through May 16, 2016 (Absentee Ballot List) April 18- May 10 2016 (mail ballots)	District Clerk must maintain list of the names of all individuals provided with absentee ballots. List is subject to public inspection and legal challenge until the day of election. Clerk must mail an absentee ballot to every qualified voter who requests one. The ballot must be mailed no earlier than 30 days or later than 7 days prior to the election day.
April 26 – May 3, 2016	Budget Statement and required attachments must be made available, upon request, at each school building and at the district office, public or free association library and on the district's website at least 7 days before Budget Hearing date and at least 14 days before the Budget Vote.
May 3 – May 10, 2016	Hold Budget Hearing 7-14 days prior to Budget Vote Day. Budget Statement (including required attachments) must be made available. The budget must be presented at the hearing in plain language and in 3 components: Administrative, Program, and Capital.
May 4 – May 11, 2016	Mail budget notice to eligible voters after the Budget Hearing but no later than 6 days prior to Budget Vote day.
May 17, 2016	Annual Meeting. The sole purpose of the meeting is the Uniform Statewide Budget Vote and Board of Education election.

## SCHOOL BUDGET DEADLINES AND ACTIONS

### June Budget Revote - 2016

June 7, 2016	Publish legal notice for budget revote once each week in the 2 weeks before revote day, first publication 14 days before revote.
May 31 – June 7, 2016	Budget Statement and required attachments must be made available, upon request, at each school building and at the district office, public or free association library and on the district's website at least 7 days before hearing & 14 days before the budget revote.
June 7 – June 14, 2016	Hold Budget Hearing 7-14 days prior to Budget Revote Day. Budget Statement (including required attachments) must be made available. The budget must be presented at the hearing in plain language and in 3 components: Administrative, Program, and Capital.
June 8 – June 15, 2016	Mail budget notice to voters the day after the hearing but no later than 6 days before revote day.
June 21, 2016	Statewide Budget Revote Day

### Required Attachments to Budget Statement Presented in Three-Part Format

- **School District Report Cards** - District-wide and for each school building, report card on school leadership once it is produced by SED and Fiscal Accountability Supplement
- **Property Tax Report Card** - (expanded format including information on tax levy limit)
- **Administrative Salary Disclosure Information**
- **Tax Exemption Report** – Chapter 258 Laws of 2008 – Post Tax Exemption Report on bulletin boards where public notices are posted.

## SAMPLE BUDGET DEVELOPMENT CALENDAR 2016-17

October 2015	Present 2016-17 budget calendar and budget development procedures to the Board of Education for adoption
November 2015	Meet with budget builders and distribute budget guidelines
December 2015	Meet with finance committee (preliminary budget presentation by budget builders)
January 2016	Meet with finance committee and or Board of Education (on parameters)
January 2016	Meet with budget builders various throughout the month
February 2016	Budget builders submit program budget composite to Business Office
February 2016	Present 2016-17 preliminary budget forecast and budget assumptions to the Board of Education
March 2016	Present 2016-17 operational and general support budget to the Board of Education for review and comment (Operations & Maintenance, Transportation and General support)
March 2016	Present 2016-17 debt service and employee benefits budget to the Board of Education for review and comment
March 2016	Present 2016-17 instructional and special education budget to the Board of Education for review and comment
March 1, 2016	Submit 2016-17 calculation for tax levy limit to Office of the State Comptroller
April 2, 2016	Legal notice of school budget hearing and budget vote. Must advertise four times within seven weeks of the vote with first publication 45 days before date of budget vote
April 2016	Finalize 2016-17 educational plan and budget (including BOCES budget) before April 25, 2016 due date for Property Tax Report Card
April 2016	Prepare absentee ballot applications, absentee ballot, related envelopes, and directions. Obtain and use locked ballot box for absentee ballots
April 2016	Deadline for submission of petitions for nominations of BOE candidates (30 days before election, 20 days in small cities)
April 2016	Final draft of budget presented to Board of Education, appointment of clerks and inspectors of elections for budget vote
April 2016	Date for drawing by District Clerk for determination of order for listing Board candidates on ballot or voting machine
April 2016	Property tax report card must be submitted to local newspaper of general circulation
April 18, 2016	Deadline for submission of petitions for propositions to be placed on ballot: (30 days preceding budget vote)

April 18, 2016	Inform candidates of legal requirement for all candidates for election to Board of Education and Library Board to file sworn statements of campaign contributions and distribute informational material. First sworn statement to be filed with the District Clerk and Commissioner of Education thirty days prior to vote date
April 22, 2016	Final date for budget adoption by the BOE. Budget statement must be made available to the public. Arrange for the pickup and return of voting machines with the Board of Elections or contractor
April 25, 2016	Property tax report card must be submitted to SED within 24 hours of its adoption, but no later than 24 days before budget vote which always falls on Saturday (April 23rd). SED accepts submissions in SAMS through Monday April 25, 2016
May 2016	Conduct voter registration with board of registration (if applicable)
May 2016	Mail district newsletter (include full disclosure information)
May 2016	Prepare voting machine inserts and transmit to county Board of Elections. Physically examine voting machines for ballot placement and sign statement at the board of elections
May 3-10, 2016	Budget hearing – budget statement and required attachments available 7 days prior to budget hearing
May 4-11, 2016	Budget notice must be mailed to eligible voters after the budget hearing and but no later than six days prior to the vote
May 12-16, 2016	District Clerk must maintain a list of names of those residents who were given absentee ballot and make such list available for public inspection the five days prior to the annual meeting except Sunday. (Public Posting no longer required)
May 12, 2016	Second sworn statement of campaign contributions or loans by candidates for membership on the Board of Education and Library Board to be filed with the District Clerk and Commissioner of Education five days prior to vote date
May 12-16, 2016	Sworn statements of campaign contributions or loans in excess of \$1,000, received before vote date and not previously reported, to be filed with the District Clerk and Commissioner of Education within twenty-four hours of receipt by candidates for membership on the Board of Education and Library Board
May 17, 2016	Statewide annual meeting / board election / budget vote day
June 16, 2016	Last date to file with District Clerk and Commissioner of Education final sworn statement of campaign contributions by candidates for membership on Board of Education and Library Board
June 21, 2016	Statewide budget revote day
July 1, 2016	Implement 2016-17 Budget

**APPENDIX B**

**SUMMARIES OF SELECTED DECISIONS OF THE COMMISSIONER OF  
EDUCATION  
RELATED TO SCHOOL DISTRICT BUDGETS**

**Decision # 9,247 - May 10, 1976**

**In the matter of the application for a determination as to certain items of alleged ordinary contingent expenses as contained in the budget of the Board of Education of the Gouverneur Central School District for the school year 1975-76.**

**Subject: Salary increases under a contingency budget including increases for management confidential employees, the District Treasurer and certain supervisory positions**

A group of taxpayers asked the Commissioner of Education to make a determination whether it was proper for the Board of Education to include salary increases for the confidential secretary to the Superintendent, the District Treasurer, the Director of Transportation and the School Business Administrator in the contingency budget adopted by the Board of Education for the 1975-76 school year. The district and each of these employees entered into individual written employment contracts in May of 1975, none of which had been negotiated pursuant to the Taylor Law (Article 14 of Civil Service Law). None of the employees in question were members of an employee union or bargaining group and covered by the provisions of a collective bargaining agreement. The taxpayers argued that it was unnecessary to provide the salary increases because there were significant numbers of qualified personnel available in the local labor market for employment at the salaries offered by the district prior to the disputed raises. The district argued that such staff salary increases were essential to the maintenance of the district's educational program and to assure the health and safety of students.

The Commissioner of Education ruled that, under a contingent budget, salary increments generally may not be provided for non-teaching employees who are **not** covered by a collective bargaining agreement or union contract even though they have individual employment contracts including school business officials who hold civil service positions. The only possible exception would be if it proves impossible to find qualified personnel, for the minimum services required of each position, at the amounts paid by the school district, before granting the contested salary increases. His ruling relies on the 1967 Opinion of Counsel No. 213 stating that under a contingency budget "only necessary salaries for the necessary numbers of non-teaching employees may be authorized" (by the board of education).

In the case of the District Treasurer, the Commissioner ruled boards of education have the authority under Education Law § 2130(4) to "fix the compensation of the Treasurer". Therefore, the Board may grant a salary increase to the District Treasurer under a contingency budget.

**Decision # 9,466 – June 30, 1977**

**In the matter of the appeals of Christian J. Reinhardt, Jr. from action of the Board of Education of the Scotia Glenville Central School District with respect to salary increases adopted by the board while the district was operating under a contingency budget.**

**Subject: Salary Increases for certified school administrators and other employees not represented by a union and not covered by collective bargaining agreements**

During the 1976-77 school year the Scotia Glenville School District operated under a contingency budget and the Board of Education authorized salary increases for instructional administrators and supervisors, as well as clerical employees and teaching aids, the Executive Secretary to the Board of Education, the Transportation Supervisor and the Maintenance and Grounds Foreman. The petitioner contended that salary increases should not have been provided to any of these employees.

The Commissioner ruled that instructional administrators and supervisors may receive salary increases under a contingency budget, because they are included in the definition of teacher found in § 3101(1) of Education Law and a contingent budget includes teachers' salaries and ordinary contingent expenses. Education Law § 3101(1) defines "teacher" as follows:

**"Teacher shall mean all full-time members of the teaching and supervisory staff of each school district of the state, including, if employed by such district, the superintendent of schools, associate, district, or other superintendents, members of the board of examiners, directors, inspectors, supervisors, principals, administrative assistants, first assistants, teachers...."**

None of the other employees in question were members of a union or bargaining group covered by the salary provisions of a collective bargaining agreement. Therefore, the Commissioner ruled they were not eligible to receive salary increases under a contingent budget, even though the Board had adopted a salary schedule for the clerical employees and teaching aids covering four school years including 1976-77. The Commissioner stated such voluntary salary schedules offered to employees who are not members of a union or bargaining group are not binding in years when the district is operating under a contingent budget.

**Decision # 13,328 – January 5, 1995**

**Appeal of Leonard J. Berry from the action of the Board of Education of the New Lebanon Central School District and Thaddeus S. Obloy, Timothy B. Price, Lois I. Face, Martha Deborah Brown, Lisa Kreutziger, Janet Haley and Neil Schweda, regarding a contingency budget.**

**Subject: Salary increases for employees who are assigned new and/or additional duties under a contingency budget**

This decision appeals the propriety of the Board of Education providing additional compensation to central office clerical (non-instructional) employees while the district operated under a contingency budget. In this instance, the clerk who performed payroll and transportation duties resigned her position. Her duties were assigned to other central office clerical staff. In addition, the Board recognized that another employee had assumed the duties of secretary to the Committees on Special Education and Pre-School Special Education. None of the additional duties in question were part of any of the clerical employees existing job descriptions.



The Commissioner of Education ruled as follows: “With regard to non-instructional employees, a Board of Education may authorize only necessary salaries for the necessary number of nonteaching employees (Formal Opinion of Counsel No. 213, supra). A Board of Education must limit expenditures to what is considered necessary to permit the school district to function properly. The record reflects that the additional amounts allocated in respondent’s (the district’s) budget for respondents (two employees) Face and Kreutziger are compensation for the performance of new duties in addition to those contained in their original job descriptions. The record further reflects these services were necessary for proper operation of the district’s programs. Accordingly, I find the additional monies paid to these employees to be proper (under a contingent budget).”

This decision affirms the authority of the Board of Education to provide additional compensation, as part of a contingent budget, to non-instructional employees assigned new or additional duties that are not part of their current job descriptions, when such employees would otherwise be prohibited from receiving a salary increase.

**Decision # 13, 942 – October 23, 1995**

**Appeal of Elaine Nolan, Audrey Cooper, Marie Devlin and Anthony Cappa from action of the Board of Education of the Hempstead Union Free School District regarding the adoption of a contingency budget.**

**Subject: Using the services of a public relations firm while on a contingency budget**

During the 1994-95 school year, the Hempstead School District was operating under a contingency budget. Upon appeal, the Commissioner of Education determined that it was improper for the Board of Education to enter into a contract with a public relations firm at a cost of \$25,000 to assist the school district in promoting its image with district residents. This decision affirms that such services are not an ordinary contingent expense and that voter approval is required to engage the services of a public relations firm.

**Decision # 14,166 - July 22, 1999**

**Appeal of James Leman from action of the Board of Education of the South Orangetown Central School District, and Sandra Kolk and George Bevington, regarding the adoption of a budget and hiring a new superintendent.**

**Subject: Amending a proposed budget after initial BOE authorization of the budget to put before the voters and amending a voter approved budget**

This decision concerns procedures related to the administration of the district’s 1997-98 budget and the preparation of the proposed budget for the 1998-99 school year. It affirms that the board of education may amend a previously approved proposed budget for the upcoming school year to increase the salary for the superintendent and to provide additional funds for staff development prior to holding the required annual budget hearing. In this case, the Board approved a contract with a new superintendent providing for a salary greater than the amount included in a prior version of the 1998-99 proposed budget



approved by the Board of Education. The Board amended the proposed budget before the annual budget hearing and in time to make a revised budget statement available to the public within the required seven days before the hearing.

This decision also affirmed the Board's authority to amend the budget for the current school year to provide for the expenditure of an unrestricted grant-in-aid from New York State per § 1718(2) of Education Law and affirms the Board's authority to approve budget transfers between and among appropriations for teachers' salaries and ordinary contingent expenses per Part 170.2(l) of Commissioner's Regulations.

**Decision # 14,250 – November 20, 1999**

**Appeal of Dione Goldin, from action of Wayne F. Gersen, Superintendent of Schools of the Wappingers Central School District, regarding a school district election.**

**Subject: Advocacy for approval of the proposed budget by the superintendent and other district administrators**

A district resident contested the propriety of the Superintendent scheduling of and attending coffee hours hosted by a number of private groups or individuals that included PTA officers, teachers, parents, Rotary Clubs, senior citizen groups and a church from April 14 through May 14, 1999. She alleged the purpose of the meetings was to speak to select groups of people who were likely to vote in favor of the district's 1999-2000 proposed budget. The petitioner further asserted the district's goal was to solicit votes from the members of the groups in question and encourage the attendees at the coffee hours to vote in favor of the budget. The petitioner also charged that the district disseminated prohibited partisan or biased information regarding the budget proposal, intended to persuade citizens to vote in favor of the budget.

The Commissioner determined that no evidence was presented to prove that the school district or Superintendent scheduled the coffee hours in question. Instead the Commissioner determined it appeared as if the events were initiated by the individuals and groups that hosted them, although some coffee hours appeared to be held, by invitation only, in private homes and were not open to the general public. The school district asserted that at the events or coffee hours in question the Superintendent and other district administrators provided only objective nonpartisan information only to the voters.

The Commissioner stated that: "The record before me does not establish that respondent (Superintendent) intentionally sought to increase the turnout of selected groups (that were) more likely to support the proposed budget. Instead, it appears that the coffees were part of respondent's efforts to provide information concerning the election (and proposed budget) to district voters and to encourage them to vote. Nevertheless, I find that the attendance of respondent and other district administrators, in their official capacities and during their hours of employment with the district, at privately-sponsored coffees that are closed to the general public for the purpose of providing information on the district election, present at least the appearance of partisan activity and should be avoided." The commissioner ordered district administrators to refrain from attending privately sponsored events closed to the public as noted in his statement above.

**Decision # 14,259 – December 3, 1999**

**Appeal of George Hubbard from action of the Board of Education of the Greece Central School District relating to the expenditure of school district funds.**

**Subject: Inappropriately exhorting voters to approve a proposed budget**

This decision involves a video produced by the Greece Central School District using district funds, which did not specifically tell or ask the voters to vote yes on the 1999-2000 annual school budget and two separate propositions, but which still included statements, according to the decision of the NYS Court of Appeals in *Philips v. Maurer*, 67 NY2d 672, that exhorted district residents to vote in favor of the three proposals. This appeal to the Commissioner reiterates the finding of the court that “statements that do not directly urge a yes vote may be impermissible if they otherwise seek to persuade or convey support for a particular position.” Certain statements cited by the Commissioner as impermissible in the video include: “I believe we must continue to pass school budgets and continue the positive momentum...”, “The budget will result in a tax increase of **“only”** 1.9%” and “The improvements we are asking you to support include...”

In *Philips V. Maurer*, the court of appeals held that a Board of Education may disseminate information “reasonably necessary” to educate and inform the voters about an annual budget or propositions, but that a Board of Education may not disseminate information at taxpayers’ expense, designed “to exhort the electorate to cast their ballots in support of a particular position advocated by the Board.

**Decision # 14,421 – August 4, 2000**

**Appeal of Ernest Schadtler Jr., from the actions of the Board of Education of the Greenburgh Central School District No. 7 and Dr. Anthony Mazzullo, Superintendent, regarding the district’s financial practices.**

**Subject: Retention of excess fund balance and purchase of computers for instructional use under a contingency budget**

The petitioner contended that the Greenburgh Central School District retained an unreserved or undesignated fund balance on June 30, 1997 in excess of the 2% of the budget for the 1997-98 school year, as allowed by § 1318 of the Real Property Tax Law. The petitioner further asserted that such funds should have been used to reduce the 1997-98 tax levy. The district asserted that such funds were properly retained to cover the cost of a future environmental cleanup project and to cover the anticipated cost of salaries associated with a new collective bargaining agreement and that no surplus funds were available to reduce the tax levy. The petitioner also contended that the district’s contingent budget for the 1998-99 school year inappropriately included an allocation of \$261,000 to purchase computer equipment.

The Commissioner determined that the Board of Education did not have the legal authority to informally retain funds for the purpose of covering future expenses and that surplus

funds in excess of the 2% limit may be retained only through the formal establishment of particular reserve funds authorized by law. Consequently, the Commissioner determined that the Board failed to comply with the provisions of § 1318 of the Real Property Tax Law concerning limitations on the retention of surplus funds.

With regard to the purchase of computer equipment, the Commissioner stated that: “While a board of education does not generally have the authority to replace equipment when operating under a contingency budget, expenditures for items necessary to maintain the educational program are considered ordinary contingent expenses.” The Commissioner also noted that: “Decisions regarding the instructional programs to be offered in the schools of a district are within the discretion of the board of education and not subject to voter approval. Here, respondent board chose to include technology as a significant element of the curriculum and recognized the value of computer literacy in many areas of study. It replaced obsolete computer equipment with new computers that its superintendent characterized as necessary to the district’s educational mission and ability to meet the new learning standards required by the Board of Regents. Petitioner contests respondents’ need to purchase such computers while the district is on an austerity (contingent) budget. While this dispute is a somewhat close question, I find that, on balance, the record supports respondents’ determination of the educational necessity of the computer purchase in question.”

#### **Decision # 14,560 – April 13, 2001**

**Appeal of Thomas Kackmeister from action of the Board of Education of the Greece Central School District and its Superintendent and Assistant Superintendent for Finance ... regarding reserve funds and capital construction projects.**

**Subject: Approval, funding, use and extension of capital reserve funds**

This decision involves the establishment, funding and use of capital reserve funds authorized by § 3651 of Education Law. The capital reserve funds established by the Greece Central School District voters, that are the subject of this appeal, included a “Building Capital Reserve Fund”, a “Bus Purchase Reserve Fund” and a “School District Equipment Fund”. In 1978, district voters approved a “Building Capital Reserve Fund” with a duration or term of 10 years and ultimately authorized the district to transfer or deposit up to \$3.55 million into the fund. The district continued to use the fund for 22 years and ultimately deposited more than \$16.0 million into the fund. The district also inappropriately placed propositions before the voters authorizing multiple annual lump sum deposits into the fund for an unspecified numbers of years. Likewise, propositions were placed before the voters authorizing an ongoing or multiyear annual level of expenditure from the “Building Capital Reserve Fund”. Likewise, such propositions authorizing expenditures failed to include the specific purposes or dollar amounts associated with the projects to be funded each year.

In 1977, the Greece voters approved a Bus Purchase Reserve Fund with a term or duration of 10 years and a stated limit of \$2.5 million. The district ultimately deposited more than \$15 million into this fund and continued to use this fund to make school bus purchases for a period of 23 years.

Propositions were not placed before the district voters to extend the life of either fund or increase the limits on the total dollars that could be transferred or deposited into each fund.

The Greece voters authorized the establishment of a “School District Equipment Fund” in May 1999 with a term of 10 years and a limit of \$1.0 million. During the 1999-2000 school year, the district transferred/deposited \$1.45 million into this fund.

Given the facts noted above, the Commissioner admonished the district to comply with all the provisions of Education Law §3651 in the operation capital reserves as follows:

- No funds may be transferred to a capital reserve fund over the entire life of the fund in excess of the stated ultimate or total dollar limit of the fund, as authorized by district voters.
- Reserve funds must be established for specific purpose(s) and for a specific probable term in keeping with the stated purpose(s).
- Expenditures from a reserve fund must be for a specific purpose, and the specific purpose of the expenditure must be set forth in the proposition seeking authorization from the voters for the expenditure.
- No transfers may be made to reserve funds after the probable term or life of the reserve, approved by the voters, has expired. The life of a reserve fund is limited to the specific probable term set by the voters in a proposition creating the fund. However, propositions may be put before district voters to extend the life of a particular fund prior to the expiration of its original term or duration. Capital reserve funds become defunct or expire if the voters do not approve such an extension prior to the expiration of the term or life of the reserve previously approved by the voters.

A proposition authorizing the funding of a reserve or authorizing expenditure from a reserve is limited to the fiscal (school) year in which the voters approved the proposition, and such proposition authorizing or funding a reserve may not contain language to continue such authorization indefinitely or into future (school) years. It is improper to use a single proposition to authorize a series of annual expenditures of a certain amount from a capital reserve fund.

**Decision # 14,906 – July 22, 2003**

**Appeals of Frederick J. Gorman from the actions of the Board of Education of the Sachem Central School District regarding financial practices.**

**Subject: BOE authority to establish certain reserve funds and use of realistic enrollment projections to develop a contingency budget**

Sachem Central School District increased the 2002-03 tax levy in October 2002 by \$3,195,000 from \$102,904,181 to \$106,099,181. The District also accrued a liability from the 2001-2002 school year of \$3.9 million for compensated absences in October 2002 (after the close of the 2001-02 school year). The petitioner (Gorman) contends the District increased the tax levy without having the authority to do so and that the accrual of the liability noted above violated Section 1318 of the Real Property Tax Law (RPTL) related to the 2% limit on unreserved/unappropriated fund balance. Petitioner contends that the \$3.9 million should have been returned to the voters and applied to reduce the 2002-03 tax levy, rather than fund future payments to employees for unused leave.

The Commissioner of Education sustained this appeal in part stating as follows: “Under RPTL §1318, at the conclusion of each fiscal year, a board of education must apply any unexpended surplus funds to reduce its tax levy for the upcoming school year. Surplus funds are defined as any operating funds in excess of two percent of the current school year budget, and shall not include funds properly retained under other sections of law (RPTL §1318[1])”.

The Commissioner further ruled that: “While that provision (RPTL §1318(1)) permits a board of education to retain additional unexpended operating funds when authorized to do so under other sections of law, it does not authorize a board to retain such funds by informally deciding to hold them for future expenses. The authority to exceed the two-percent limit applies only to reserve funds specifically authorized by law. If surplus money is to be used to establish a reserve fund it should be established before the tax levy. General Municipal Law §6-p authorizes the establishment of an employee benefit accrued liability reserve fund. Therefore, respondent (Sachem CSD) had the authority to create such a reserve fund. However, it did not do so. I remind respondent of its obligations to comply fully with all the requirements of RPTL §1318.”

The Commissioner also cautioned the district to use realistic projections of increased student enrollment to develop future contingency budgets. The petitioner argued that the district included substantial additional funds in both the 2001-02 and 2002-03 contingency budgets to accommodate growth in student enrollment that never fully materialized. The funds budgeted to accommodate enrollment growth, which by law may be excluded from consideration in calculating the contingent budget cap on appropriations, are to be returned to the District's taxpayers, if the growth in student enrollment is less than anticipated.

**Decision # 14,869 - May 15, 2003**

**Appeal of Anthony and Elizabeth Liberatore from the action of the Board of Education of the Whitesboro Central School District regarding retention of unexpended surplus funds.**

**Subject: Retention of excess unreserved and unappropriated fund balance.**

The petitioners appealed the action of the Board of Education of the Whitesboro Central School District in retaining surplus funds in excess of 2% of the 2002-2003 operating budget.

In October 2002, their auditors advised Whitesboro Central School District that the district had \$3,695,593 in its undesignated fund balance as of June 30, 2002, approximately 9% of the ensuing year's budget. The petitioners requested the Commissioner order the school district to return all funds in excess of 2% of the operating budget back to the taxpayers. The district responded to the Commissioner by stating the surplus was created because the district overestimated the 2002-2003 expenditures and underestimated the revenues. This caused the district to underestimate the amount of surplus to be applied to the 2002-2003 tax levy.

The Commissioner stated: "Pursuant to Section 1318 of the RPTL (Real Property Tax Law), at the conclusion of each fiscal year, a board of education must apply any unexpended surplus funds to reduce its tax levy for the upcoming school year." Surplus funds are considered to be "any operating funds in excess of two percent of the current school year budget, and shall not include funds properly retained under other sections of law" (RPTL §1318 [1]).

This appeal was sustained in part. The Commissioner ruled: "There is no mechanism for returning a pro rata share of funds to the taxpayers once the tax levy has been made, as requested by the petitioners. However, respondent is directed to comply fully with the requirements of RPTL Section 1318 in the future." This provision of law further requires that "[t]he warrant of the collecting officer...shall state the amount of unexpended surplus funds in the custody of the board and shall further state that except as authorized or required by law, such unexpended surplus funds have been applied in determining the amount of the school tax levy."

**Decision # 15039 – March 30, 2004 – Meunch I**

**Decision # 15210 - April 19, 2005 – Meunch II**

**Decision # 15397 – April 18, 2006 - Meunch III**

**Appeals of Gregory M. Meunch from actions of the Board of Education of the Central Square Central School District regarding tax levy.**

**Subject: Estimating state aid and deviating from final state aid projections (provided annually by SED) to set the actual tax levy**

The petitioner (Meunch) contended that the respondent (Central Square CSD) did not properly reflect the most recent estimate of State Aid the district would receive under the



enacted 2002-03 State budget in setting the tax levy for the 2002-2003 school year. The Executive Budget estimate of State Aid was \$29.1 million while the estimate based upon the final State Budget enacted in May 2002 was \$30.6 million, or \$1.5 million higher than the Executive Budget estimate. The petitioner filed similar actions in subsequent school years

In Meunch I, the Commissioner of Education ruled as follows: “In determining the tax levy, respondent should use the best estimate of State Aid that is reasonably available at the time the tax warrant is issued. When respondent met on August 26, 2002 to levy taxes and issue tax warrants, it was obligated to take the enacted State budget into account in estimating its State Aid for 2002-2003. Respondent has offered no satisfactory explanation of why it deviated from the most recent aid estimate. Although I sustain the appeal in this regard, there is no need to adjust the 2002-2003 tax levy at this time because the use of a low estimate of State Aid should have led to an excess of revenues over expenditures at the end of the 2002-2003 school year, which the district would have been obligated to apply to reducing the 2003-2004 tax levy.” In Meunch III, the Commissioner ruled as follows: “The difference between the State aid projected for the district in the enacted 2005-2006 State budget (\$31,813,456) and the State aid estimate used by respondent for development of the district's 2005-2006 budget (\$31,022,883) is \$790,573. Respondent explains that \$236,230 of this amount is accounted for by BOCES aid, the difference between the State's projection of \$1,485,027 and the district's estimate of \$1,248,797. Respondent states that the district spent less on services purchased from BOCES during the 2004-2005 school year than it did in the 2003-2004 school year, and anticipates that it will receive less BOCES aid in 2005-2006 than included in the State's projection.

Respondent also contends that the State's projection included \$86,953 in growth aid, which is based on a projected increase in the district's enrollment. However, respondent states that the district's more current estimate of student enrollment indicates that the district will not ultimately be eligible to receive any growth aid for the 2005-2006 school year, and provides a copy of the district's property tax report card which projects no increase in public school enrollment. Petitioner offers no evidence to dispute respondent's contentions concerning BOCES Aid or growth aid.

Finally, the State budget projections reflect aid for universal pre-kindergarten and for early grade class size reduction, in the amount of \$214,320 and \$214,904, respectively. Respondent asserts that under the Uniform System of Accounts prescribed by the State Comptroller for required use by school districts, some of the items involved are not included in the district's general fund budget. As respondent asserts, grant money, including aid for universal pre-kindergarten and early grade class size reduction, is accounted for separately and should not be included in the aid total which is used to calculate the district tax levy.

These four aid categories account for \$752,407 of the \$790,573 difference. The remaining difference of \$38,166 is attributable to minor differences in operating, software, library materials and textbook aids. I therefore conclude that petitioner has failed to meet his burden of proving that respondent's determination of estimated State aid that was used to calculate its 2005-2006 tax levy was arbitrary, capricious or contrary to law.”

**Decision # 15219 – May 12, 2005**

**Appeal of Ken Uy and Arthur Norden from action of the Board of Education of the Sullivan West Central School District regarding a capital reserve fund.**

**Subject: Establishment of a capital reserve and duration of voter authorization to expend funds from a capital reserve**

The petitioners (Uy and Norden) claim that the respondent (Sullivan West CSD) improperly expended monies from its capital reserve fund without voter authorization. At the May 16, 2000 annual election, district voters authorized Sullivan West CSD to establish a capital reserve fund for the maximum amount of \$3,000,000 to be used “for the purpose of paying part of the costs of the new High School construction and reconstruction of other District buildings.” In addition, at a June 22, 2000 special district meeting, voters approved a proposition authorizing Sullivan West CSD to do a \$49,938,453 capital construction project and for such construction and reconstruction to expend up to \$3,000,000 from the “District-wide Construction and Reconstruction Reserve Fund.”

According to Comptroller’s opinion 83-223, expenditures from capital reserve funds should always be consistent with the specific purpose established by the voters for the use of such reserves and the proposition for the expenditure of capital reserve funds should explicitly state the purpose for which the dollars will be used (Education Law §3651). A proposition authorizing the funding of a reserve fund or expenditure from a reserve fund is limited to the fiscal year for which the voters approved the proposition, and may not contain language continuing such authorizations indefinitely or in subsequent school years.

The Commissioner of Education ruled as follows: “I find that the June 22, 2000 referendum was insufficient to authorize respondent’s expenditure from its capital reserve fund. First, the proposition fails to specifically identify the purpose for which the funds are sought. Further, the proposition improperly requests authorization to spend “up to” the ultimate amount of the reserve fund, rather than specifying a dollar figure. In addition, because voter authorization must be obtained during the same school year in which the board proposes to expend the funds, the June 22, 2000 proposition was insufficient to authorize the expenditure of reserve funds during the 2001-2002 school year.” Capital reserve funds are recognized as expended in the general fund at the point in time when the interfund transfer of such funds from the general fund to the capital fund is accomplished. The district should have made this interfund transfer prior to July 1, 2000 and would be afforded an indefinite period of time to expend such dollars in the capital fund for the projects in question.

The Commissioner also indicated that it is inappropriate to seek voter authorization to establish a capital reserve fund and consequently seek voter authorization to make expenditures from the fund in the same school year. The Sullivan West CSD should have instead asked the voters to approve a budgetary appropriation in the form of an interfund transfer from the general fund to the capital fund to support the proposed capital construction project. The purpose of the capital reserve is to set funds aside for use in future school years.



**Decision # 15372 – March 6, 2006**

**Appeal of George R. Hubbard from action of the Board of Education of the Greece Central School District regarding a budget hearing.**

**Subject: Conduct of the annual budget hearing.**

The petitioner (Hubbard) contended that the respondent (Greece CSD) did not hold a proper budget hearing on May 10, 2005 because the district allegedly did not properly call the event to order, declare it to be a “budget hearing,” adopt an agenda or vote to close the event as a public hearing. Petitioner also contended that the district failed to present any budget information at the event but merely allowed speakers to make comments about the budget.

The petitioner further contended that some speakers spoke at the behest of the district, and consequently district resources were improperly used to advocate in favor of the budget.

Education Law §1716 requires that each school district present its budget at the annual hearing to be held not less than seven or more than fourteen days before the budget vote. The district acknowledged that “its process of providing an open forum for public comment on the budget does not fulfill the statutory requirement for a presentation of the budget to the public. The Commissioner reminded the district of the need to comply with the provisions of Education Law §1716.

Various speakers at the budget hearing attested that they were not directed or requested to do so by the district administration or the board of education. The high school principal stated she addressed the Board on her own time and in her capacity as president of the administrative and supervisors union. The Commissioner indicated “Petitioner failed to present any evidence that respondent (Greece CSD) used public resources to advocate for the budget by having the principal or any other citizen speak on its behalf.”

**Decision # 15369 – March 6, 2006**

**Appeal of Boris F. Grib from action of the Board of Education of the Center Moriches Union Free School District regarding a budget vote.**

**Subject: Property Tax Report Card**

Petitioner (Grib) alleged that respondent’s Real Property Tax Report Card (“report card”) did not comply with Education Law §1716(7) (a) because it did not include the total estimated school tax levy that would result from adoption of the proposed budget and the percentage increase or decrease in total school tax levy from the school district budget for the preceding school year.

For relief, petitioner requested that respondent conduct a new budget vote for the 2004-2005 school year. Petitioner also requests that the implied contingency budget for the

2005-2006 school year be based on the 2003-2004 budget rather than the 2004-2005 budget.

Respondent (Center Moriches UFSD) alleged that at the time the report card was published, questions regarding the anticipated amount of state aid and other information required to project the tax levy had not been received, and it would not be appropriate to provide a "guesstimate" tax levy. Respondent alleges that it acted lawfully in connection with the 2004-2005 budget vote and provided sufficient information to voters concerning the budget increase.

While the appeal was dismissed on procedural grounds, the Commissioner noted that Education Law §1716(7)(a) requires that a district's report card contain the total estimated school tax levy that would result from adoption of the proposed budget, and the percentage increase or decrease in total school tax levy from the school district budget for the preceding school year. Accordingly, the Commissioner reminded the school district of the need to fully comply with all aspects of §1716 in the future.

#### **Decision # 15392 – March 30, 2006**

**Appeal of George R. Hubbard from action of the Board of Education of the Greece Central School District regarding budget propositions.**

**Subject: Use of separate propositions to authorize bus purchases and changes in transportation policy**

On April 12, 2005, the Greece Board of Education adopted a proposed budget resolution and two propositions to be placed on the ballot at the annual district meeting. Proposition 1 authorized the expenditure of \$1,585,000 for the purchase of up to 25 new buses and one snow removal vehicle. Proposition 2 authorized a change in the district's transportation policy to provide transportation for all students in grades three through five at a cost of \$215,000. Petitioner contends that the funds for both propositions should have been included in the main district budget because their separate presentation keeps the main budget artificially low and therefore misleads the voters.

Petitioner (Hubbard) maintains that while it is proper to place a change in the transportation policy in a separate proposition, the funds to pay for that change should be included in the main district budget.

The Commissioner ruled as follows: "The appeal must be sustained as to petitioner's contention that respondent should not have used Proposition 1. Pursuant to Education Law §§1716(4) and 1804, a board of education of a central school district is required to present a budget to district voters in three components: an administrative component, a program component and a capital component. Section §170.8(d) of the Commissioner's regulations prescribes the items that must be included in the capital component, including general fund budgetary appropriations for operation of plant, maintenance of plant and school bus purchases. Therefore, general fund budgetary appropriations for maintenance vehicles and school bus purchases should be included as line items in the capital component of the budget. A board should only use separate propositions for such

purchases when specifically required (e.g. when entering into an installment purchase contract under General Municipal Law §109-b, when bonding, or when appropriating from a capital reserve fund).”

Petitioner asserts that the cost of the change in transportation policy should have been included in the main budget. Petitioner claims that if Proposition 2 were defeated, the cost of the change could be removed from the final budget. The commissioner ruled that it is proper to use a separate proposition to both authorize a change in transportation policy and to appropriate the necessary funds to initially cover the additional cost.

**Decision # 15490 – November 21, 2006**

**Appeal of John M. Himmelberg, Jr. and Andrew J. Little from actions of the Board of Education and Superintendent of the Fairport Central School district regarding a district election.**

**Subject: Use of the school district e-mail system by the teacher’s union to disseminate a partisan message regarding candidates running for seats on the Board of Education.**

The teacher’s union is authorized per contract to use the Fairport CSD e-mail system to communicate with union membership. The union president sent a message via e-mail officially endorsing two candidates for election the board of education and setting forth the union position on why membership should oppose the election of other candidates. The union president also exhorted union members to use e-mail to get the word out to friends, family and neighbors on why they should support the endorsed candidates and oppose the election of the appellants. Paper copies of partisan materials were also distributed by the union using teacher mail boxes in each school building.

Appellants (Himmelberg and Little) contacted the superintendent to inform him of their contention that the union actions constituted an improper use of district resources for partisan political purposes. The superintendent responded that the union had a contractual right to use the e-mail system to communicate with its members and that neither he nor the board of education endorsed the union president’s message or position. The appellants responded that a collective bargaining agreement cannot authorize the improper use of district resources and asked the superintendent to put a top to the alleged abuse. The superintendent provided the appellants with an opinion from district legal counsel supporting his earlier assertion. It indicated “that the combination of contract language and longstanding practice clearly authorized the union’s use of district e-mail for union business”. In this appeal, the union took the position that modification or limitation of the union’s use of district communication systems could only be accomplished through future collective bargaining and that past practice dictated that the union could use such systems without review or limitation by district officials.

The Commissioner ruled as follows: “While a board of education may provide informational material to the voters concerning a vote or election, the use of district resources to distribute materials designed to solicit favorable votes violates the constitutional prohibition against use of public funds to promote a partisan political position. Even indirect support,

such as a school board giving a private organization access to its established channels of communication to espouse a partisan position has been deemed improper. In addition to lending indirect support to the private organization's efforts to influence the vote, permitting such use of school facilities also lends an appearance of prohibited partisan activity by the school district.

I find that in the circumstances presented here, respondents improperly permitted the union to use district resources to advocate its position. The union emails endorsed two candidates, denigrated other candidates and their alleged supporters and urged union members to carry the union's views to the community.

Respondents assert that the union's use of email was undertaken pursuant to its contract and was consistent with the parties' longstanding practice. However, the parties' collective bargaining agreement cannot authorize unconstitutional partisan use of district resources. Respondents' contention that they did not know of the emails in advance or authorize their distribution is unavailing. A board of education must be vigilant to ensure that district resources are not used, either directly or indirectly, to disseminate partisan information and must be accountable for how its resources are being used. Accordingly, I direct respondents to review their policies on elections and the use of district resources to ensure that adequate safeguards are in place to guard against improper partisan political activity."

#### **Decision # 15491 – November 30, 2006**

**Appeal of Lawrence Lombardo from action of the board of Education of the Lynbrook Union Free School District regarding a capital reserve fund.**

**Subject: Appropriate action to correct the deposit of revenue into a capital reserve fund beyond the limit set by the voters**

On May 15, 2001, district voters approved a proposition to establish a capital reserve fund (the "reserve fund") for "district wide improvements." The proposition stated that the reserve fund "shall be capitalized in an amount not to exceed five million dollars, plus interest." The term of the reserve fund was five years, expiring on June 30, 2006.

Respondent treated the reserve fund as a "rolling reserve", periodically depositing funds into it and making expenditures from it. Although the cumulative deposits over time totaled \$8,345,855.23, by making periodic expenditures totaling \$3,938,013, the balance in the reserve fund never exceeded \$5 million at any given time

The cumulative total of deposits into the reserve fund could not exceed the five million dollar limit approved by the voters. It was overcapitalized by \$3,345,855.23 – the difference between the \$5 million voter approved limit and the \$8,345,855.23 total deposits. At its January 11 and February 8, 2006 meetings, the board informed residents of the over funding of the reserve fund.

The board decided to seek voter approval to extend the reserve fund five more years and increase its limit to \$12 million. At the time, the reserve fund balance was \$4,407,824.23. On February 15, 2006, respondent board authorized a transfer of \$3,345,855.23 from the

reserve fund to the general fund's unappropriated fund balance. Respondent left \$1,061,987 in the reserve fund – the difference between the \$5 million fund limit and \$3,938,013 total expenditures at that point. On March 8, 2006, respondent resolved to seek voter approval to extend the reserve fund to June 30, 2011 and increase its limit to \$12 million at its annual district meeting on May 16, 2006. Respondent further resolved that, if voters approved the proposition, it would transfer the \$3,345,855.23 to the new reserve fund; if voters did not approve the proposition, the money would be applied to reduce the 2006-2007 tax levy. The voters approved the proposed changes.

A district resident (Lombardo) filed an appeal challenging the district's management of the reserve fund and the board's action to put a proposition before the voters to rectify the situation.

The commissioner ruled that the Board's actions to correct the overcapitalization and to seek voter authorization to increase the dollar limit of and extend the life of the reserve were proper. The appeal was dismissed.

**Decision # 15504 – December 22, 2006**

**Appeal of Frank J. Russo Jr., from action of the board of education of the Port Washington Union Free School District regarding preparation of a projected contingency budget.**

**Subject: Items of expenditure that may be excluded from calculation of the cap on contingency budgets.**

This appeal clearly established that interest on Tax Anticipation Notes and that principal and interest payments on certain energy conservation leases are not items of expenditures to be excluded when calculating the appropriation/expenditure cap applicable to a contingency budget.

**Decision # 15541 – February 27, 2007**

**Appeal of Diane Cirillo from action of the board of Education of the Seaford Union Free School District regarding financial practices.**

**Subject: Limits on board of education authority to increase the voter approved budget.**

For school year 2004-05, voters in the Seaford UFSD approved a budget on a second vote held in June of 2004 that included reductions of \$1.6 million from the first proposed budget, which the voters rejected. As the NYS budget for the 2004-05 state fiscal year was not approved until August of 2004, the district used an estimate of State Aid to develop both budgets put before the voters. Ultimately, the district received \$349,470 more in State Aid than anticipated and the board of education voted in August 2005 to restore a grade 4 teacher as well as an athletic trainer position that had been cut from the budget the voters defeated the previous May.

The Commissioner dismissed this appeal as untimely but made the following statement. “I must also comment on respondent’s use of the additional State aid revenue. Upon receipt of State aid in an amount greater than that estimated in the budget approved by voters, respondent unilaterally increased the amount of the approved budget and restored certain ordinary contingent expenses. Respondent does not assert that the restored items were unanticipated contingent expenses, or that the additional funds it received were grants in aid made for specific purposes. Under these circumstances, respondent had no authority to increase the budget appropriation approved by the voters.

**Decision # 15597 – June 27, 2007**

**Appeal of Maureen A. Powell from action of the Board of Education of the Roosevelt Union Free School District, Superintendent Ronald O. Ross, and Chairman Edward McCormick regarding provision of transportation and other matters.**

**Subject: Changing the district transportation policy without the approval of the voters.**

The district transportation policy in force in 2005 did not provide transportation to and from school for students attending schools located within the boundaries of the school district, except for certain students with disabilities. All the students attending district schools live less than 1.5 miles from their school of attendance.

In 2005-06, the district began the demolition and replacement of an elementary school building. Students previously attending that school were sent to another vacant school building across a busy commercial street, while their home school was being replaced. A decision was apparently made (without voter approval) to provide such students with transportation to and from their temporary school of attendance, even though none of the students lived more than two miles from the temporary school site. Note: Education Law requires districts to provide transportation for students in grades K-8 who live more than two miles from school.

Respondents (Ross and McCormick) acknowledge that no action was taken to seek voter approval for the transportation provided and further acknowledge that they did not seek to establish a child safety zone pursuant to §3635-b of Education Law.

The Commissioner ruled that the power to provide transportation beyond that required by Education Law §3635 is a power reserved to the voters. As respondents admitted that no special proposition(s) were approved by the voters to authorize the transportation services at issue in this appeal, the Commissioner ruled the respondents did not have the authority to provide the transportation services in question, even given the existence of legitimate student safety concerns.



## **Decision # 15376 – April 3, 2008**

**Appeal of Vincent F. Cook from action of the Board of Education of the Liverpool Central School District and Superintendent Jan Matousek regarding budget practices.**

**Subject: Limitations on the ability of the Board of Education to amend the approved school district budget**

In June of 2006, the Board of Education of the Liverpool Central School District increased the 2005-06 approved district budget by approximately \$1.9 million. Petitioner Cook asserted in this appeal that the expenditures added to the budget were illegal, because they were neither ordinary contingent expenses nor emergency expenses. By the time the Commissioner rendered a decision, budget year 2005-06 was over and the contentions raised were moot. The Commissioner dismissed the appeal, but at the same time chose to comment on the Board of Education's financial practices. The Board of Education admitted that it had used unanticipated revenue from the 2005-06 budget to encumber and fund the purchase of BOCES Technology in the 2006-07 school year. The Commissioner noted that this act constituted a violation of Section 1716 of Education Law, as the Board failed to disclose all of the expenditures that should have been properly included in the 2006-07 district budget. The Commissioner also noted that certain of the expenditures supported by the \$1.9 million increase in the 2005-06 district budget were clearly not for unanticipated ordinary contingent expenses or for an emergency and therefore were not allowable. The Commissioner likewise noted that the Board of Education is obligated to apply unexpended surplus funds remaining at the conclusion of the school year to reduce the tax levy in the upcoming school year per section 1318 of the Real Property Tax Law.

NOTE: To access decisions of the Commissioner of Education on the Internet please go to the website: <http://www.counsel.nysed.gov/Decisions//home.html>

## APPENDIX C

### VOTER APPROVAL THRESHOLDS FOR BUDGETS AND PROPOSITIONS

<u>IF PROPOSED BUDGET...</u>	<u>AND</u>	<u>PROPOSITION RESULT IN...</u>	<u>...THEN...</u>	<u>VOTER THRESHOLD</u>
< or = Maximum Allowable Levy		Budget + Capital Proposition <, = or > Maximum Allowable Levy <i>(Expenses related to capital propositions ie. capital construction or bus purchases are exclusions from the tax levy limit so therefore do not impact the voter threshold)</i>		Budget: 50% + 1 vote Proposition: 50% + 1 vote
> Maximum Allowable Levy		Budget + Capital Proposition Require a levy > Maximum Allowable Levy <i>(Expenses related to capital propositions ie. capital construction or bus purchases, are exclusions from the tax levy limit so therefore do not impact the voter threshold)</i>		Budget: 60% vote Proposition: 50% + 1 vote
< or = Maximum Allowable Levy		Budget + Education Program Proposition Require a levy < or = Maximum Allowable Levy		Budget: 50% + 1 vote Proposition: 50% + 1 vote
> Maximum Allowable Levy		Budget + Education Program Proposition Require a levy > Maximum Allowable Levy		Budget: 60% vote Proposition: 60% vote

If the budget fails and the proposition passes, the district has the following options:

1. Revise or resubmit main budget for revote in June.
2. Adopt a contingent budget. Under a contingent budget the tax levy cannot exceed the tax levy for the prior year (0% tax levy change) with no exclusions. Implementation of the proposition is optional except if the proposition is to revise transportation distance limits, then the approved proposition must be implemented (with no increase in the levy). In any case, under a contingent budget no additional taxes may be levied above the prior year tax levy amount regardless of whether a proposition is implemented or not.
3. After 2 budget defeats, the Board of Education must adopt a contingent budget.

Education Program Propositions = interscholastic athletics, kindergarten, etc. This DOES NOT INCLUDE: mandated programs such as core subjects and special education Propositions must be for a purpose within the power of the voters to authorize.



## **APPENDIX D**

### **BOCES CAPITAL PROJECT EXPENSES**



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,  
NY 12234

Office of Educational Management  
Tel. 518-474-6541  
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E-mail: joconno3@mail.nysed.gov

November 3, 2006

Mr. Thomas Dorr  
Assistant Superintendent for Administrative Services  
Oneida-Herkimer-Madison BOCES  
Box 70 Middle Settlement Road  
New Hartford, NY 13413-0070

Dear Mr. Dorr:

Thank you for your letter of October 20, 2006. Deborah Cunningham asked me to provide a response to you. In the letter, you ask where the component school districts would account for payments made to BOCES, for a BOCES capital project, in their three part budgets. You also ask if the new cost associated with the BOCES capital project would be excluded in the calculation of a contingent budget cap.

With regards to the accounting for this in the three part budget, the districts must include this payment on the Administrative component. This is the component that includes the account codes where school districts record payments to BOCES (A1981.49, A1983.49). Therefore, this is the component that must include the payments that the districts will make to BOCES for the capital project.

As for the calculation of a contingent budget cap, this payment to BOCES may not be excluded. The budgeted capital expenditures that may be excluded pertain only to capital projects for and on school-owned facilities. That is not the case of a BOCES capital project.

I trust that I have interpreted your questions correctly. Please do not hesitate to contact me if you should require additional information or clarification.

Sincerely

Jay O'Connor  
Assistant in School Financial Aid

cc: D. Cunningham

## **APPENDIX E**

### **CONTINGENCY BUDGETS**

## What are the rules regarding a contingency budget?

### *Duty to Present Budget to Voters*

All school districts, except the Big Five city school districts (New York, Rochester, Buffalo, Yonkers and Syracuse), must present a budget to district voters for approval each year (in the Big Five city school districts budgets are not approved by the voters but rather are part of the city budget developed and approved by the mayor and the city council). This initial vote must be held on the third Tuesday of May. Boards of Education are required to prepare budgets in plain language and delineated into three components: Administrative, Program and Capital. Education Law and Regulations of the Commissioner of Education define the types of expenses that make up each of these three components (see chart at end).

### *Defeated Budgets and Budget Revote*

Should the voters defeat the budget, the district has the option of offering a revised budget to voters for a revote, or immediately adopting a contingency budget. Districts are only allowed one budget revote to be held on the third Tuesday in June. If the budget fails a second time, then the Board of Education must adopt a contingency budget before July 1<sup>st</sup> that includes no increase from the prior year tax levy. In the case of a contingency budget, districts are constrained in three ways: determination of ordinary contingency budget appropriations, the administrative cap and the restriction on the tax levy. Ordinary contingency expenses are defined as the expenditures absolutely necessary to operate and maintain schools (except for those items over which the statutes themselves either provide mandates for or give discretion to the board of education).

### *Administrative Cap*

School districts operating under a contingency budget are subject to an administrative cap. The administrative component of the budget is capped at the **lesser** of (1) the percent of the administrative component to the total budget in the prior year's budget, not including the capital component, or (2) the percent that the administrative component comprised in the last proposed defeated budget for the subsequent year, not including the capital component. (A sample calculation of the administrative component cap may be found on page 19).

### *Spending Not Subject to Restriction*

## What steps do districts follow to calculate their contingency budget?

1. Determine the amount of non-contingency and contingency items that would need to be removed from the contingency budget.
2. Check the administrative component to ensure it stays within statutory limits.
3. Ensure that the tax levy to support the contingent budget is equal to or less than the prior year tax levy.

The Office of Educational Management Services posts a sample administrative percent calculation. In addition, Education Law 2022 requires district residents to receive a budget notice which includes the contingency budget amount and a statement of assumptions regarding the calculation of such amount and information regarding the tax levy and tax levy limit.

### **How is the tax levy restricted under a contingent budget?**

The contingency budget adopted by the Board of Education would always be less than the proposed budget. The contingency budget must not include a tax levy that is greater than the prior year tax levy.

### **What does a district do if they incur an unanticipated, ordinary contingency expense, not budgeted for, while on a contingency budget?**

A district may increase its contingency budget up to the cap amount for an unanticipated, ordinary contingency expense that it might encounter during the year. An example would be a high-cost student with special needs who moves into the district after the school year has started and was not anticipated. However, the Board of Education must ensure continued compliance with the contingent budget administrative cap and may not levy a tax when operating under a contingency budget that is greater than the prior year tax levy.

From SED Education Management Services:  
<http://www.p12.nysed.gov/mgtsserv/budgeting/contingency.html>

## **APPENDIX F**

### **SECTION 2023-a OF EDUCATION LAW – LIMITATIONS UPON SCHOOL DISTRICT TAX LEVIES**

\* § 2023-a. Limitations upon school district tax levies. 1. Generally. Unless otherwise provided by law, the amount of taxes that may be levied by or on behalf of any school district, other than a city school district of a city with one hundred twenty-five thousand inhabitants or more, shall not exceed the tax levy limit established pursuant to this section, not including any tax levy necessary to support the expenditures pursuant to subparagraphs (i) through (iv) of paragraph i of subdivision two of this section.

2. Definitions. As used in this section:

a. "Allowable levy growth factor" shall be the lesser of: (i) one and two one-hundredths; or (ii) the sum of one plus the inflation factor; provided, however, that in no case shall the levy growth factor be less than one.

b. "Available carryover" means the amount by which the tax levy for the prior school year was below the applicable tax levy limit for such school year, if any, but no more than an amount that equals one and one-half percent of the tax levy limit for such school year.

c. "Capital local expenditures" means the taxes associated with budgeted expenditures resulting from the financing, refinancing, acquisition, design, construction, reconstruction, rehabilitation, improvement, furnishing and equipping of, or otherwise providing for school district capital facilities or school district capital equipment, including debt service and lease expenditures, and transportation capital debt service, subject to the approval of the qualified voters where required by law.

d. "Capital tax levy" means the tax levy necessary to support capital local expenditures, if any.

e. "Coming school year" means the school year for which tax levy limits are being determined pursuant to this section.

f. "Inflation factor" means the quotient of: (i) the average of the national consumer price indexes determined by the United States

department of labor for the twelve-month period preceding January first of the current year minus the average of the national consumer price indexes determined by the United States department of labor for the twelve-month period preceding January first of the prior year, divided by: (ii) the average of the national consumer price indexes determined by the United States department of labor for the twelve-month period preceding January first of the prior year, with the result expressed as a decimal to four places.

g. "Prior school year" means the school year immediately preceding the coming school year.

h. "School district" means a common school district, union free school district, central school district, central high school district or a city school district in a city with less than one hundred twenty-five thousand inhabitants.

i. "Tax levy limit" means the amount of taxes a school district is authorized to levy pursuant to this section, provided, however, that the tax levy limit shall not include the following:

(i) a tax levy necessary for expenditures resulting from court orders or judgments against the school district arising out of tort actions for any amount that exceeds five percent of the total tax levied in the prior school year;

(ii) in years in which the system average actuarial contribution rate of the New York state and local employees' retirement system, as defined by paragraph ten of subdivision a of section nineteen-a of the retirement and social security law, increases by more than two percentage points from the previous year, a tax levy necessary for expenditures for the coming fiscal year for school district employer

contributions to the New York state and local employees' retirement system caused by growth in the system average actuarial contribution rate minus two percentage points;



(iii) in years in which the normal contribution rate of the New York state teachers' retirement system, as defined by paragraph a of subdivision two of section five hundred seventeen of this chapter, increases by more than two percentage points from the previous year, a tax levy necessary for expenditures for the coming fiscal year for school district employer contributions to the New York state teachers' retirement system caused by growth in the normal contribution rate minus two percentage points; and

(iv) a capital tax levy.

2-a. Tax base growth factor. a. No later than February fifteenth of each year, the commissioner of taxation and finance shall identify those school districts for which tax base growth factors must be determined for the coming school year, and shall notify the commissioner of the tax base growth factors so determined, if any.

b. The commissioner of taxation and finance shall calculate a quantity change factor for the coming school year for each school district based upon the physical or quantity change, as defined by section twelve hundred twenty of the real property tax law, reported to the commissioner of taxation and finance by the assessor or assessors pursuant to section five hundred seventy-five of the real property tax law. The quantity change factor shall show the percentage by which the full value of the taxable real property in the school district has changed due to physical or quantity change between the second final assessment roll or rolls preceding the final assessment roll or rolls upon which taxes are to be levied, and the final assessment roll or rolls immediately preceding the final assessment roll or rolls upon which taxes are to be levied.

c. After determining the quantity change factor for a school district, the commissioner of taxation and finance shall proceed as follows:

(i) If the quantity change factor is negative, the commissioner of taxation and finance shall not determine a tax base growth factor for the school district.

(ii) If the quantity change factor is positive, the commissioner of taxation and finance shall determine a tax base growth factor for the school district which is equal to one plus the quantity change factor.

3. Computation of tax levy limits. a. Each school district shall calculate the tax levy limit for each school year which shall be determined as follows:

(1) Ascertain the total amount of taxes levied for the prior school year.

(2) Multiply the result by the tax base growth factor, if any.

(3) Add any payments in lieu of taxes that were receivable in the prior school year.

(4) Subtract the tax levy necessary to support the expenditures pursuant to subparagraphs (i) and (iv) of paragraph i of subdivision two of this section for the prior school year, if any.

(5) Multiply the result by the allowable levy growth factor.

(6) Subtract any payments in lieu of taxes receivable in the coming fiscal year.

(7) Add the available carryover, if any.

b. On or before March first of each year, any school district subject to the provisions of this section shall submit to the state comptroller, the commissioner, and the commissioner of taxation and finance, in a form and manner prescribed by the state comptroller, any information necessary for the calculation of the tax levy limit; and the school

district's determination of the tax levy limit pursuant to this section shall be subject to review by the commissioner and the commissioner of taxation and finance.

4. Reorganized school districts. When two or more school districts reorganize, the commissioner shall determine the tax levy limit for the reorganized school district for the first school year following the reorganization based on the respective tax levy limits of the school

reorganized school district for the first school year following the reorganization based on the respective tax levy limits of the school districts that formed the reorganized district from the last school year in which they were separate districts, provided that in the event of formation of a new central high school district, the tax levy limits for the new central high school district and its component school districts shall be determined in accordance with a methodology prescribed by the commissioner.

5. Erroneous levies. In the event a school district's actual tax levy for a given school year exceeds the maximum allowable levy as established pursuant to this section due to clerical or technical errors, the school district shall place the excess amount of the levy in reserve in accordance with such requirements as the state comptroller may prescribe, and shall use such funds and any interest earned thereon to offset the tax levy for the ensuing school year.

6. (a) Notwithstanding any other provision of law to the contrary, in the event the trustee, trustees or board of education of a school district that is subject to the provisions of this section proposes a budget that will require a tax levy that exceeds the tax levy limit for the corresponding school year, not including any levy necessary to support the expenditures pursuant to subparagraphs (i) through (iv) of paragraph i of subdivision two of this section, then such budget shall be approved if sixty percent of the votes cast thereon are in the affirmative.

(b) Where the trustee, trustees or board of education proposes a budget subject to the requirements of paragraph (a) of this subdivision, the ballot for such budget shall include the following statement in substantially the same form: "Adoption of this budget requires a tax levy increase of \_\_\_\_\_ which exceeds the statutory tax levy increase limit of \_\_\_\_\_ for this school fiscal year and therefore exceeds the state tax cap and must be approved by sixty percent of the qualified voters present and voting."

7. In the event that the original proposed budget is not approved by the voters, the sole trustee, trustees or board of education may adopt a final budget pursuant to subdivision eight of this section or resubmit to the voters the original or a revised budget at a special district meeting in accordance with subdivision three of section two thousand seven of this part. Upon one defeat of such resubmitted budget, the sole trustee, trustees or board of education shall adopt a final budget pursuant to subdivision eight of this section.

8. Notwithstanding any other provision of law to the contrary, if the qualified voters fail to approve the proposed school district budget upon resubmission or upon a determination not to resubmit for a second vote pursuant to subdivision seven of this section, the sole trustee, trustees or board of education shall levy a tax no greater than the tax that was levied for the prior school year.

9. Nothing in this section shall preclude the trustee, trustees, or board of education of a school district, in their discretion, from submitting additional items of expenditures to the voters for approval as separate propositions or the voters from submitting propositions pursuant to sections two thousand eight and two thousand thirty-five of this part; provided however, except in the case of a proposition submitted for any expenditure contained within subparagraphs (i) through

(iv) of paragraph i of subdivision two of this section, if any proposition, or propositions collectively that are subject to a vote on the same date, would require an expenditure of money that would require a tax levy and would result in the tax levy limit being exceeded for the corresponding school year then such proposition shall be approved if sixty percent of the votes cast thereon are in the affirmative.

\* NB Repealed June 16, 2016