

Contingent Budget Info

Excerpts from the Questar III BOCES State Aid Planning Unit:

2024-25 Budget Development School District Guidebook

State Aid

& FINANCIAL PLANNING SERVICE



2024-25

Budget Development

School District Guidebook

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Contingent Budget

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 working within 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 percentage of the administrative component equals the sum of the appropriations comprising the administrative component divided by the sum of the appropriations comprising the administrative and programmatic components of the budget. The capital component is excluded from this calculation.

Sample Administrative Cap Calculation

	2023-24 Adopted Budget	2024-25 Proposed Budget
Administrative Component	\$100,000	\$125,000
Program Component	\$700,000	\$1,000,000
Capital Component	\$200,000	\$225,000

Administrative % for 2023-24 Adopted Budget =

$$\frac{2023-24 \text{ Administrative Component}}{2023-24 \text{ Administrative Component} + 2023-24 \text{ Program Component}} = 12.50\%$$

$$\frac{\$100,000}{\$100,000 + 700,000} = 12.50\%$$

Administrative % for 2024-25 Proposed Budget =

$$\frac{2024-25 \text{ Administrative Component (Proposed Budget)}}{2024-25 \text{ Administrative Component} + 2024-25 \text{ Program Component (Proposed)}} = 11.11\%$$

$$\frac{\$125,000}{\$125,000 + 1,000,000} = 11.11\%$$

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 2023-24 adopted budget administrative cap or the administrative cap of the budget that was proposed in the June 2024 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 2023-24 budget (exclusive of capital)

OR

The % of the administrative component in the last defeated budget proposed for the 2024-25 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.

Contingent Budget Fact Sheet (*continued*)

- Ordinary contingent expenses may 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 and maintain school buildings and the educational program.
 - Preserve the property of the district; and
 - Ensure the health and 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** if 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 NYS 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 36-39.

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 can 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 more than 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."

Board of Education Responsibility for the Determination of Ordinary Contingent Expenses (*continued*)

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 most 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 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.

Ordinary Contingent Expenses (*continued*)

Formal Opinion of Counsel No.213 specifically discusses provisions for teachers' salaries as authorized by Section 1709, subdivision 16, of NYS 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 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 considered 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. (NYS Education Law 305.14)

Appendix D

BOCES Capital Project Expenses



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,
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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. NYS Education Law and Regulations of the NYS 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 1st 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 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

Appendix E

Contingency Budgets (*continued*)

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, Section 2022 of NYS Education Law 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 contingent 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/mgtserv/budgeting/contingency.html>*